

AGRARIAN CONFLICTS
IN
COLONIAL NEW YORK
1711-1775

BY
IRVING MARK, M.A.

INSTRUCTOR IN HISTORY, BROOKLYN COLLEGE

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
FACULTY OF POLITICAL SCIENCE
COLUMBIA UNIVERSITY

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To
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PREFACE

SOCIAL struggles of the colonial period are being brought more sharply into focus by contemporary American historians. It is now thought necessary to do more than to evaluate such conflicts as being only the cleavage of rich and poor, or of conservative and radical. These categories have hidden rather than revealed more meaningful social distinctions. Nor have the oversimplified terms, such as "upper and lower classes," added much light. It is only by recognizing the complexities involved in inter-relating economic, social, legal, and political phases that any realistic formulation can be made.

In view of this, a very limited area for study has been circumscribed. Since agriculture was the basic means of making a living for the great bulk of those who peopled colonial America, it is perhaps fitting that the landlord and small farmer should receive special attention. Not the whole colonial seaboard, but only those portions of the Hudson Valley which were the centers of agrarian disturbances several decades prior to and during the revolutionary period will concern us. These were included in what was then Westchester, Dutchess, Albany, Cumberland, Gloucester, and Charlotte Counties. The last four counties contained that portion of New York claimed by New Hampshire, out of which the state of Vermont was ultimately carved.

The land system of these regions became a source of social discontent chiefly among the tenants of Philipse, Van Rensselaer, Livingston, and Van Cortlandt, and among the New Hampshire grantees and their settlers (in the present area of Vermont). If one is to understand this phenomenon it is necessary to deal with many problems: the transfer of vast grants to patroons, lords of manors, and patentees; the legal incidents of these, especially insofar as they concerned landlord-tenant relations; fraud perpetrated on drunken Indians and facilitated by vague metes and bounds which gave rise to rival claims; and the political power of the great landed families. The ac-

cumulation of all of these evils drove New York "peasants" to deeds of violence. Though this violence sprang from the land economy, this study does not pretend to survey the whole land system *per se*. Rather is it concerned with those phases which led to agrarian movements against landlords. This agitation was cast in not only a vertical mould, with small farmers arrayed against landlords, but also a horizontal one, with one band of land speculators supported by most small farmers pitted against rival land speculators.

The breadth and importance of the subject make it impossible to expect an entirely unplowed field. Ruth L. Higgins' *Expansion in New York* (1931) presented material on the terms and conditions under which New York colonial land grants have been made. Others have contributed to the study of the legal phases of the land system. Franklin L. Pope's *Western Boundary of Massachusetts* (1892) has discussed in some detail anti-rentism in the Hudson Valley and the New York-Massachusetts boundary dispute; Hiland Hall's *History of Vermont* (1868) and, more recently, Matt B. Jones *Vermont in the Making 1750-1777* (1939), New York land speculators and the New Hampshire Grant controversy; Edward P. Cheyney's *Anti-rent Agitation in the State of New York* (1887), the persistence of tenant-farmer discontent during the nineteenth century. Indeed, the list is too long to do justice at this point to all whose works have helped me.

But withal, there have been many gaps that had to be filled. No one has dealt adequately with the inequitable and fraudulent nature of colonial land distribution, the legal incidents of the land system, and landlord politics with a view towards showing their relationship to social discontent. The problems of landlord-tenant relations and the landlord's dominance in the colonial politics of New York, so frequently noted by Lieutenant-Governor Colden, have not received the attention they merit. Nor has sufficient prominence been given to specific tenant and settler rebellions. At no time has all the material, old and new, been synthesized into a comprehensive pattern.

This work, it is hoped, will serve this purpose. Perhaps the importance of fulfilling this task will be more clearly recognized when similar studies, completed for other colonies, show the widespread nature of small farmer agitation as in the case of the Carolina Regulator Movement and the Jersey anti-rent controversy.

I wish to acknowledge my obligations to the many who have assisted me: Evarts Boutell Greene, emeritus professor, in whose seminar at Columbia University I began this study which his patient and scholarly criticism helped shape; Professors John A. Krout and Henry S. Commager, both of Columbia University, whose repeated readings were followed with valuable suggestions; Professor Herbert M. Morais, my colleague at Brooklyn College, who has been generous with his time and helpful with his criticism of the various drafts; Professor Harry J. Carman of Columbia University, who read the completed draft; S. G. Nissenson, attorney-at-law, and Professor Richard B. Morris of City College, for their meticulous criticism of chapter II; Professor Julius Goebel of Columbia University, Oscar Handlin, Fellow at Harvard University, Carl Carmer, Dr. Harry B. Yoshpe, and Dr. Beverly McAnear of Brooklyn College, for their discussion of aspects of the study; and Dr. Alexander C. Flick, State Historian, and Dr. Edward P. Alexander, Director of the New York State Historical Association, for their helpful communications. In fairness to all concerned, I accept sole responsibility for any errors and for the selection, arrangement, and interpretation of facts.

My appreciation for courteous and helpful service is extended to the staffs of the Library of Columbia University, New York Public Library, New York Historical Society, New York State Library, especially Miss Edna L. Jacobsen, head of its Manuscripts and History Section, New York Hall of Records, especially Mr. Maxwell Volins, Chief Clerk of its Record Clerk Division, W. P. A. Historical Records Survey for New York, and various state and county offices. Dr. Leo

J. Henkin of the English Department of Brooklyn College has been kind enough to offer criticism with respect to style. Finally, the dedication of the monograph to my wife is inadequate tribute to her steadfast encouragement and assistance in preparing the manuscript for the press.

BROOKLYN, N. Y.

FEBRUARY, 1940.

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INTRODUCTION

More than two years after "the shot heard round the world" at Concord, John Watts called the attention of the British Ministry to a significant social cleavage within the ranks of the embattled farmers of New York.

As the counties of Albany, Dutchess, and Westchester, in the province of New York are in an absolute state of vassalage, being all tenants at will to Rensselaer, Livingston, Beckman, and Philipse, and which are as large and populous as most counties in England, I do therefore, . . . advise Administration to have a bill brought into Parliament to declare the above enormous grants and patents extravagant, and therefore vacated.

I would then advise that the crown by proclamation declare, that all the present tenants be free from their vassalage, and that every one may be a freeholder of such farm and premises which he now holds for ever, on condition that they not only return to their allegiance to the King, but that they in person take up arms, and assist his Majesty in reducing the rebels to subjection.

This, my Lords, being done would instantly bring you at least six thousand able farmers into the field, without one shilling expense to the nation. If this hint be acceptable, I am ready at any time to wait on you, in order to be more explicit.¹

Watts was in an excellent position to understand the land situation. As boundary commissioner, he saw at first hand the land disputes which arose as a result of the boundary controversies east of the Hudson. As colonial official, owner of land in New York City, Westchester, and Dutchess, and as husband of Ann DeLancey, he was bound by ties of interest and marriage to the great landed families of colonial New York.²

1 J. Watts in reprint from the *Morning Chronicle* in *The Penn. Ledger or the Weekly Advertiser*, Oct. 29, 1777 (N. Y. Hist. Soc.).

2 He held offices in the Colonial Assembly from Nov. 8, 1752 and in the Council from June 10, 1758 until the Revolution forced him to leave the Colony. He was appointed eastern boundary commissioner on July 4, 1753. His children married the children of William Alexander, of Peter DeLancey, and of Sir William Johnson. D. C. Barck's introduction to *Letter-book of John Watts*, *Collections of N. Y. Hist. Soc.*, Vol. LXI.

Why did Watts feel that at least 6,000³ tenant-farmers, with a little encouragement, could be induced to turn against the great patriot-landlords of Rensselaerswyck and of Livingston and Cortlandt Manors?⁴ He was undoubtedly acquainted with the many outbreaks of tenant-farmers against landlords that would have made a British policy of *divide et impera* a shrewd one. Nor was he the first one to note how restive the tenant-farmer was under the yoke of the landed aristocracy of New York colony. Cadwallader Colden, reporting on the lands of New York in 1732, ascribed the emigration from New York to the unwillingness of the people to become the vassals of great landlords of the colony. He wrote:

And every year the Young people go from this Province and Purchase Land in the Neighbouring Colonies, while much better and every way more convenient Lands lie useless to the King and Country. The reason for this is that the Grantees themselves are not, nor never were in a Capacity to improve such large Tracts and other People will not become their Vassals or Tenants for one great reason as peoples (the better sort especially) leaving their native Country, was to avoid the dependence on landlords, and to enjoy in fee to descend to their posterity that their children may reap the benefit of their labor and Industry.⁵

With considerable asperity he described the invidious connection between the great landlords of New York and the machinery of justice. "Several Families in New York are possessed of Lands of great Extent, greater than those of any

3 *The Penn. Ledger or the Weekly Advertiser*, Oct. 29, 1777.

4 The best map showing the layout of counties and manors as they were on the eve of the Revolution is the Sauthier map of 1779 in E. B. O'Callaghan, *Documentary History of the State of New York*, I, facing p. 774. The only error seems to be that of placing Cortlandt Manor in Dutchess instead of Westchester County. At the outbreak of the Revolution the patroon, Stephen Van Rensselaer, was only eleven years old. Yet he can be considered a "patriot-landlord" since his education was supervised by his maternal grandfather, Philip Livingston, and his kinsmen were staunch revolutionists. *Dictionary of American Biography*, XIX, 211-212; Appleton's *Cyclopedia of American Biography*, VI, 250-3.

5 *Doc. Hist. of N. Y.*, I, 384.

Subject of England; some of them setting up boundless Claims. They are connected by Relation and Kindred with the Gentlemen of the Law, both on the Bench and the Bar, most of whom are themselves interested in one or other of the great Land Patents.”⁶

Apparently the land system involved deep social cleavages.⁷ In point of fact, the period just preceding the Revolution in New York colony was marked by a series of violent outbreaks of tenant-farmers against their landlords or settler farmers led by land speculators against rival claimants. They seem to have begun before 1750 in Dutchess County, swept over Albany and Westchester Counties, reaching a climax in 1766, and then to have continued in the great stretches of Cumberland, Gloucester, and Charlotte Counties, where Vermont is today, until they were swallowed up in the greater conflagration of the Revolution.⁸

The prolonged period of time during which this small farmer agitation occurred, the extent of territory involved, and its similarity to other movements like the Carolina Regulator rebellion and the New Jersey anti-rent riots give the New York disturbances a significance comparable to Bacon's, Leisler's and Shays's Rebellions.⁹ Yet, for some reason or other,

⁶ *The Conduct of Cadwallader Colden, Esq.; Late Lieutenant-Governor of New York; relating to the Judges' Commissions, . . . Appeals to the King, . . .*, pp. 28-29. Cf. Myers, G., *History of the Supreme Court of the United States*, esp. chaps. I and III.

⁷ This view is somewhat different from that of Osgood of whom Professor D. R. Fox very aptly remarked, "Land interests him not as something to till with spades and hoes, or to sell for profit, but as something that engenders controversy as to distribution and taxation by the different governments." Fox, D. R., *Herbert Levi Osgood An American Scholar* (N. Y., 1924), pp. 76-7.

⁸ To what extent anti-rent agitation continued during the Revolution is difficult to say. Ellis suggests that "the state of affairs then existing was, in many cases, made an excuse for the wreaking of private revenge." Ellis, F., *History of Columbia County New York*, p. 42.

⁹ *Vide infra*. R. H. Records is at work on a doctoral thesis at the University of Chicago, entitled "Land as a Basis for Social Discontent in the New England Colonies prior to 1776."

the narrative of the New York uprisings has never crept into any of the standard compendious histories. Although some extended studies and several short articles deal with certain aspects of this subject, the complete picture must be pieced together from newspaper accounts, court records, colonial documents, especially the land papers of colonial families, local histories, and articles in periodicals.¹⁰

Sometimes the form of the struggle was an anti-rent controversy; sometimes, a striving for more secure tenure; and, in some cases, a "levelling" movement seeking the division of great estates for the benefit of the poor tenant. Not infrequently, what appeared on the surface to be a boundary dispute,¹¹ or a contested Indian grant, or a faultily drawn lease,¹² from all of which rival legal titles were derived, was actually tenant-farmer agitation against a landlord or settler farmer

10 The relevant official records which are cited in E. B. O'Callaghan, *Calendar of Historical Manuscripts in the Office of the Secretary of State*, II, 759 ff., seem to have been burned in the 1911 fire at Albany. Consult the bibliography for the eighteenth century phases of land controversies. Special mention might be made of: Pope, F. L., "The Western Boundary of Massachusetts, a Study of Indian and Colonial History," *Berkshire Historical and Scientific Society Collections*, I (1892), 27-85; Handlin, O., "The Eastern Frontier of New York," *New York History*, XVIII (1937), 50-75; Spencer, C. W., "The Land System of Colonial New York," *Proceedings of the N. Y. State Hist. Assoc.*, XVI (1917), 150-164; Hall, Hiland, *History of Vermont from its Discovery to Its Admission into the Union in 1791*; Alexander, E. P., *A Revolutionary Conservative, James Duane of New York*. Most recently, Carl Carmer has presented a popularized undocumented version of the Prendergast uprising in *The Hudson*, pp. 81-99.

11 Pope believes that the New York boundary dispute with Massachusetts was a "death-struggle between the free land tenures and independent town organizations of the Massachusetts colony, and the antiquated feudal system under which the adjacent territories of the Province of New York were held and governed." Pope, *op. cit.*, I, 30.

12 Colden was dubious of efforts to break extravagant grants "in this Country, where perhaps few Grants in America are made with such skill and care that some flaw may not be found in them by a strict and legal search, so that every man will be apt to look upon any attempts of this kind, as in some measure his own case, and those that are really concerned will use all their Art to stir up the people to make it a Country Quarrel." *Doc. Hist. of N. Y.*, I, 385-6.

opposition fanned by land speculators against rival claimants.¹³ The Palatines' struggle for land; the rebellion of tenants aided by Massachusetts speculators against the Livingstons, Philippses, Van Cortlandts, and Van Rensselaers; the border war of the New Hampshire Grant settlers led by Yankee land hucksters against those of New York for control of a region claimed by New York and New Hampshire, a conflict which culminated in the creation of Vermont—such were the phases of agrarian discontent in eighteenth century New York.

13 This general opinion, arrived at independently, seems to have been the view of Ellis. He writes that "it is doubtful whether the controversy between the provinces was not less a cause of than a convenient excuse for the lawlessness of those who were determined to free themselves from the burden of yearly rent to the manors, particularly that of Livingston, which as they asserted, owed its very existence to falsehood and fraudulent pretences." Ellis, *Hist. of Columbia Co.*, p. 36.

CHAPTER I

LAND ACQUISITION AND THE SEEDS OF DISCONTENT

THE seeds of social discontent were sown deeply in the system of colonial land distribution. On the eve of the Revolution, an inequitable distribution of great landed wealth acquired at slight cost by shrewd landlords provoked the wrath of small farmers. The circumstances under which this land was acquired must have added to the bitterness of the yeoman's envy. For, discerning eyes could catch glimpses of transactions that were not without taint of fraud.¹ Huge grants were inspired by bribes, family connections, and fee hunger. Colonial governors made many of these illegal sales in violation of colonial statutes or British instructions which limited the size, or prohibited the making, of land grants. Where these limitations on the transfer of land were not boldly violated, they were subtly circumvented by the use of "dummy" grantees or of fictitious names. Nor were land-hungry governors averse to these illegal and corrupt practises where they themselves were the chief beneficiaries. Vaguely defined metes and bounds, and Indian grants wrested from drunken or credulous natives afforded the unscrupulous, opportunities for swelling their landed estates. Overlapping grants and Indian claims arising from these circumstances were a source of colonial violence and litigation. From all these seeds came the bitter fruit of controversy.

An examination of the Sauthier map reveals the inequitable distribution of land grants throughout the province of New York about the time of the Revolution. The scenes of violent agrarian unrest were in those counties where the hugeness

¹ Richard Coote, Earl of Bellomont, and Cadwallader Colden were certainly aware of the existence of extravagant and fraudulent grants as will be shown below. Gustavus Myers has emphasized this aspect more than most other historians. See his *History of the Great American Fortunes*, Vol. I, chaps. I-III.

of grants in the hands of great landed families was more prevalent. These counties were Westchester, Dutchess, Albany, Cumberland, and Gloucester.² Besides many lesser manors,³ Westchester contained the broad expanse of Stephanus Van Cortlandt's 86,000 acre manor in the northern portion of the county⁴ and that of Philipsborough, 156,000 acres, in the eastern.⁵ That portion of Dutchess which subsequently became almost the whole of Putnam County was filled with the 205,000 acres of Frederick Philipse's Highland Patent.⁶ Livingston Manor threw its 160,000 acres across that part of Albany County which later became the southern third of Columbia.⁷ Van Rensselaer's properties covered a huge part of

² This map is dated January 1, 1779. A copy of it may be found in *Doc. Hist. of N. Y.*, I, 774. The names of the counties as used by Sauthier will be referred to throughout, since these are what contemporaries of this period employed. Needless to say, these counties have undergone considerable change before and after his period. Thus while Westchester has remained substantially the same down to the present, Albany has become Saratoga, Schenectady, Rensselaer, Albany, and parts of Schoharie and of Greene, Warren, Washington, and Columbia; Dutchess has mothered Putnam; Charlotte has disappeared to make way for St. Lawrence, Franklin, Clinton, and Essex; and Gloucester, Cumberland, and parts of Charlotte and of Albany, have been swallowed by Vermont. French, J. H., *Gazetteer of the State of New York*, *passim*; Bien, Joseph R., *Atlas of the State of New York*, Plate 3 *et seq.*; *A Century of Population Growth from the First Census of the U. S. to the Twelfth 1790-1900*, pp. 60 ff.; and *New York in the Revolution as Colony and State*, I, 4.

³ Fordham to John Archer, 1671; Morrisania to Lewis Morris, 1697; Pelham to John Pell, 1687; and Scarsdale to Caleb Heathcote, 1701. French, *op. cit.*, pp. 49-52.

⁴ Letters Patent of Lands (70 vols.), VII, 145, hereafter cited as Patent Books, June 17, 1697.

⁵ To Frederick Philipse, April 1, 1680, French, *op. cit.*, p. 49; erected as a manor by a charter of June 12, 1693, Patent Books, VI, 396.

⁶ June 17, 1697, Philipse-Gouverneur Land Titles (Col. U.), no. 14. The rest was blocked out with the ample patents of Francis Rombouts, Henry Beekman, Great and Little Nine Partners, Rhinebeck, Schuyler and part of the Oblong. Patent Books, V, 206, 216; VI, 325; VII, 69, 80.

⁷ Two purchases from Indians were confirmed by Governor Dongan on Nov. 4, 1684 and August 27, 1685. From these, the manor was patented July 22, 1686. *Doc. Hist. of N. Y.*, III, 615-627.

SOME LARGE GRANTS RELATED TO SMALL FARMER AGITATION

<i>Grantees</i>	<i>Patents & Manors</i>	<i>Acres</i>	<i>Date</i>
WESTCHESTER COUNTY			
Stephanus Van Cortlandt	Cortlandt Manor	86,000	1697
Frederick Philipse	Philipsborough	156,000	1680/93
DUTCHESS COUNTY			
Adolph Philipse	Highland Patent	205,000	1697
ALBANY COUNTY			
Robert Livingston	Livingston Manor	160,000	1686
Kiliaen van Rensselaer	Rensselaerswyck	1,000,000	1630/37, 1685
Edward Collins, <i>et al.</i>	Walloomsac	12,000	1739
NEW HAMPSHIRE GRANT REGION			
Godfridus Dellius	Dellius Grant	537,600	1696
Philip Skene	Skenesborough Patent	25,000	1765
Goldsbrow Banyar	Part owner of many	150,800	1765/76
Samuel Avery	Same	53,200	do.
James Duane	Same	52,000	do.
Earl of Dunmore	Same	51,000	do.
William Tryon	Same	32,000	do.
William Cockburn	Same	30,070	do.

Albany, later Albany, Rensselaer, and part of Columbia Counties, stretching its 1,000,000 acres about forty-eight miles east to west and forty north to south at its greatest spans.⁸

The 537,600 acre claim of Reverend Godfridus Dellius extended over Charlotte from Battenkill to Saratoga patent northward and east of Lake Champlain to Vergennes over an area seventy by twelve miles.⁹ This, together with the 25,000

⁸ The patroonship was erected from 1630 to 1637. It was subsequently created and confirmed as a manor by English governors. Patent Books, V, 228 (Nov. 3, 1685); VII, 237 (May 20, 1704); Sauthier map and Bien, *op. cit.*, Plate no. 3; Nissenson, S. G., *The Patroon's Domain*, pp. 305, 345-8, 381-5. The vast reaches of Albany and Tryon contained other large grants like the patent of Hoosick, Kayaderosseras, and Nicholas Bayard's "Schohare" which covered an area of forty miles along the Schoharie Creek and of thirty miles in breadth. Higgins, R. L., *Expansion in New York with Special Reference to the Eighteenth Century*, pp. 22, 24, 27; Patent Books, VII, 1.

⁹ Patent Books, VII, 43 (1696); O'Callaghan, E. B., ed., *Documents Relative to the Colonial History of the State of New York*, IV, 391.

acre Skenesborough patent, and the 47,450 acre Argyle patent, lay within a bitterly contested area which was to become the present site of Washington County and the state of Vermont. Even parts of Albany like the 12,000 acre expanse of Walloomsac were involved in this controversy, although it mostly concerned the short-lived counties of Cumberland, Gloucester, and part of Charlotte.¹⁰ Between April, 1765, and June, 1776, New York governors granted or confirmed in the region that was to become Vermont 2,115,610 acres, exclusive of 2,418,710 acres of military patents which were generally bought up by the same New York grantees.¹¹ That this landed wealth was concentrated in the hands of relatively few landlords is apparent from the report of the commission on April 23, 1799, for the distribution of Vermont funds to New York claimants. Apparently seventy-six who with very few exceptions were residents of New York City, mostly lawyers, merchants and professional land jobbers, claimed 600,100 acres. Some of the largest claims were Goldsbrow Banyar's 150,800 acres, Samuel Avery's 53,200 acres, James Duane's 52,000 acres, William Cockburns' 30,070 acres. Each claim was on the average slightly over 26,000 acres. Nineteen claimed 500,000 acres; eight, 376,000 acres or two thirds of the whole.¹²

Needless to say, these were not the only large grants in New York Colony. Any complete survey of the land system, which this does not pretend to be, would necessarily include many others.¹³ Here it is sufficient to call attention to the

10 These grants were to Philip Skene, March 31, 1765, to Duncan Reid, March 13, 1764, and to Edward Collins, June 15, 1739, and others, respectively. French, *Gazetteer of N. Y.*, pp. 49-51.

11 Hall, Hiland, "New York Land Grants in Vermont, 1765-1776," *Collections of the Vermont Historical Society*, I (1870), 145-159. James Duane, Goldsbrow Banyar, and Col. John Reid speculated in military grants. *Ibid.*, p. 159.

12 Commission's Report, *Doc. Hist. of N. Y.*, IV, 1024-5. Cf. Hall, H., *Hist. of Vt.*, pp. 507-9. Banyar frequently bought under the names of others.

13 A few were only indirectly related to the controversies: George Klock's 16,000 acre patent, Dec. 21, 1754; Sir William Johnson's 92,000 acre Royal

fact that in a period of feverish land aggrandizement, the Van Cortlandts, Philipses, Livingstons, Rensselaers, and many land speculators like the Banyars and Duanes had carved out large estates for themselves in the Hudson Valley or Green Mountain regions. This tremendous concentration of landed estates in the hands of a few boded ill for the future of a society whose many yeomen had come to view these great landlords with grave suspicions.

With the exception of the grants in the Vermont region, the estates to Van Rensselaer, Livingston, Philipse, and Van Cortlandt had been granted long before the agrarian outbreaks. Since the huge size of these domains was made possible and maintained by colonial governors before the middle of the eighteenth century, it seems fitting to make a general survey of their policies.

About six of them indulged in a lavish and corrupt squandering of the landed patrimony of the colony: Fletcher, Cornbury, Montgomerie, Cosby, Clarke, and Clinton. Against this extravagance and corruption the efforts of Bellomont, Hunter, and Burnet proved of little avail.

Under Governor Benjamin Fletcher, from 1692 to 1698, the distribution of land grants which included those to Stephanus Van Cortlandt and to Adolph Philipse, both of which were involved in the great rebellion of 1766, reached an extraordinarily low level of public morality. Vast domains were given away for bribes, a practice which Bellomont, his successor, described as "Collonel Fletcher's intolerable corrupt selling away the lands of this Province."¹⁴ It was charged that he got in bribes at least 4,000 pounds and that he cor-

Grant, April 16, 1765, both in Tryon (Fulton) County; John Evans' 350,000 acre patent, Sept. 20, 1694, in Ulster and Orange Counties, which also contain the Hardenburgh Patent (2,000,000 acres), Minisink, Cheesecock, Kakiate, and Waywanda (356,000 acres). Patent Books, VI, 214, 266, 298, 310, 450; Higgins, *op. cit.*, pp. 26-7; French, *op. cit.*, pp. 50, 52.

¹⁴ *Doc. Rel. to Col. N. Y.*, IV, 791; see also IV, 330, 334, 335, 346, 528; V, 651.

rupted members of his Council with land grants.¹⁵ Captain John Evans got an area of forty by twenty miles square for a mere twenty shillings quit-rent per annum,¹⁶ although he was allegedly offered 10,000 pounds in London for it. Evans said Fletcher was paid 500 pounds "in lieu of his established fees upon grants of lands."¹⁷ The cloud that covered the Evans title shadowed the grants to Nicholas Bayard along the "Schohare" River¹⁸ and to Reverend Godfridus Dellius¹⁹ near Lake Champlain and along the Mohawk. The charges of fraud, brought by the Mohawks, led to the subsequent annulment of all these grants.²⁰

Amid such prodigality and corruption Governor Bellomont in 1698 came as a refreshing return to frugality and honesty.²¹ He understood full well the pressing need for reform. He deplored a condition which, he believed, left three fourths of

15 Bellomont to Lords of Trade, June 22, 1698, *Doc. Rel. to Col. N. Y.*, IV, 320. "Colonel Fletcher gave great encouragement to Pirates." *Ibid.*, IV, 481; also pp. 386-391; *Calendar of State Papers, Colonial Series, America and West Indies*, 1700, p. 606.

16 Sept. 20, 1694 in Ulster and Orange, Patent Books, VI, 450; *Doc. Rel. to Col. N. Y.*, V, 283; IV, 391 n. 3; Council Minutes, 1668-1783 (28 vols., N. Y. State Library), VII, 55; *Calendar of Council Minutes 1668-1783*, pp. 95, 97; N. Y. Colonial Mss (103 vols., N. Y. State Library), XXXIX, 137.

17 *Doc. Rel. to Col. N. Y.*, V, 283-4.

18 Dec. 12, 1695, Patent Books, VII, 1; N. Y. Colonial Mss, XL, 75, 113; *Cal. of Hist. Mss*, II, 247, 249; *Doc. Rel. to Col. N. Y.*, IV, 344-47, 392, 395, 398, 785; Council Minutes, VIII, 4; *Cal. of Coun. Min.*, p. 124.

19 Patent Books, VII, 43, 136; *Doc. Rel. to Col. N. Y.*, IV, 330, 345-7, 391, 393; N. Y. Colonial Mss, XL, 72; XLI, 124, 143; *Cal. of Hist. Mss*, II, 247, 260; *Cal. of Coun. Min.*, p. 118; Council Minutes, VIII, 3; New York Colonial Mss Land Papers, 1642-1803 (63 vols.), II, 250, hereafter cited as Land Papers; *Cal. of New York Colonial Mss Indorsed Land Papers 1643-1803*, p. 49; Hall, Hiland, "The New York Dellius Patent," *Historical Magazine*, 2d series, III, 74-76.

20 *Journal of the Legislative Council of the Colony of New York 1691-1775*, I, 140-1; cf. *Colonial Laws of New York*, I, 413.

21 Richard Coote, Earl of Bellomont, was governor from April 2, 1698 until his death on March 5, 1701, though absent from New York during the administration of Lieutenant-Governor John Nanfan from May 16, 1699 to July 24, 1700.

the whole province "in the hands of ten or eleven men."²² In this view he seconded Thomas Weaver, agent for the province, who testified before the Board of Trade in 1698, "it is thought there is not one foot of land left undisposed of in the Province."²³ The Lords of Trade responded to these promptings.²⁴ In addition to a one thousand acre limitation on grants, a quit-rent of two shillings sixpence for every hundred acres, and the forfeiture of lands not improved or settled within three years, they ordered the annulment of extravagant grants.

Thus encouraged, Bellomont fell to with a vengeance and forced through the legislature a bill annulling the grants to Dellius, Bayard, Evans, and others.²⁵ The bill, passed on May 12, 1699 only after the Governor voted to break a three to three tie in the Council,²⁶ was opposed by Stephan Van Cortlandt, Robert Livingston, and William Smith.²⁷ These holders of huge estates were possible future victims of such a measure.

In the colonial legislature the battle lines of the landed aristocracy were drawn more tightly in defense of their property and reputations. No further vacating acts were forthcoming. Despairing of getting a self-interested body to break the extravagant grants, Bellomont appealed to the Lords of Trade for "a peremptory order from the King"²⁸ and an "Act of Parliament in England, for I am a little jealous I

²² *Doc. Rel. to Col. N. Y.*, IV, 529; *Calendar of State Papers, Colonial Series, America and West Indies 1700*, p. 671.

²³ *Doc. Rel. to Col. N. Y.*, IV, 384; also p. 392.

²⁴ *Ibid.*, IV, 395, 396, 411, 484.

²⁵ *Colonial Laws of N. Y.*, I, 412-417. For history of the act, *Doc. Rel. to Col. N. Y.*, V, 21-6; cf. *ibid.*, IV, 327, 506, 514, 519.

²⁶ *Journal of Leg. Council*, I, 137; *Doc. Rel. to Col. N. Y.*, IV, 510, 528-9, 533; *Cal. of Hist. Mss*, II, 269.

²⁷ They owned 86,000 acres in Westchester, 160,000 acres in Dutchess, and fifty square miles in Long Island, respectively. *Doc. Rel. to Col. N. Y.*, IV, 510.

²⁸ *Ibid.*, IV, 535, 533.

shall not have strength enough in the Assembly of New Yorke to break them.”²⁹

Despite Bellomont's denunciations of corruption, bribery, high politics, and land greediness, the forces of landed wealth slowly regained some lost ground. Many efforts were made to vitiate Bellomont's plans. Thus, in the controversy over Colonel Samuel Allen's claim to what is now New Hampshire, Bellomont, as Governor of Massachusetts, in June 1700, reported:

There was an offer made me of 10,000 pounds in mony, and that Coll. Allen should divide the Province of New Hampshire with me; but I thanke God I had not the least tempting thought to accept of the offer, and I hope nothing in this World will ever be able to tempt me, to betray England in the least degree. This offer was made me three or four times . . . I will make it appear that the lands and woods claim'd by Coll. Allen are much more valuable than ten of the biggest estates in England, and I will rate those ten estates at 300,000 pounds apiece one with another which is 3 millions.³⁰

Furthermore, Bellomont was accused by enemies like Peter Schuyler of favoring Leislerians in failing to annul the latter's grants.³¹ Powerful pressure at Westminster induced the Crown to obstruct the enforcement of the vacating act.³² However, when it was repealed by the Assembly in 1702 through the efforts of Cornbury, the Privy Council, disallowing the repeal, finally in 1707 upheld the law.³³ Not even the restrictions on

²⁹ *Ibid.*, IV, 553.

³⁰ *Ibid.*, IV, 673-5. Cf. *Calendar of State Papers; Colonial Series. America and West Indies, 1700*, pp. 359-360, 671. The claim was outlawed.

³¹ *Doc. Rel. to Col. N. Y.*, IV, 620-2; Schuyler, G. W., *Colonial New York: Philip Schuyler and His Family*, II, 139-140.

³² *Doc. Rel. to Col. N. Y.*, IV, 533; Higgins, *op. cit.*, pp. 25-6.

³³ *Doc. Rel. to Col. N. Y.*, V, 21-6; *Acts of Privy Council, Colonial Series*, II, 553. Bellomont's argument that naval stores would be saved for the crown carried weight. *Doc. Rel. to Col. N. Y.*, IV, 529; Knittle, W. A., *The Early Eighteenth Century Palatine Emigration, a British Government Redemption Project to Manufacture Naval Stores*, pp. 138-9.

the size of future grants were honored when a requisite number of obliging friends joined to purchase lands which were subsequently reconveyed to the real grantee.³⁴ Thus the forms of legal restriction persisted in their empty dignity. Bellomont's offensive had met a stronger force.

Shortly after Bellomont's death in 1701, Governor Cornbury,³⁵ who confirmed in 1704 the patent that created Rensselaerswyck as a manor, returned to the practices of Fletcher. Extravagance and corruption in land grants, ushered in by Cornbury's repeal of the vacating act, continued with few interruptions during his administration, from 1702 to 1708. Although the Privy Council in 1707 declared Cornbury's maneuver invalid,³⁶ the delay had provided the favored land jobbers with a Roman holiday. Furthermore, notwithstanding his admission that the grants to Bayard, Evans, and Delliuss and his associates were exorbitant, Cornbury refused to recommend any further vacating acts with the statement that he would not propose anything of that nature without instructions from his superiors.³⁷

Cornbury's abuse of authority through large grants to his friends and favorites, who included George Clarke, the provincial secretary, related to the Governor through marriage, led Colden to remark later that his extravagant grants were worse than those of all his predecessors put together.³⁸ Furthermore,

34 For instructions of Lords of Trade, see above. *Doc. Rel. to Col. N. Y.*, IV, 396, 411; Schuyler, *Col. N. Y.*, I, 117.

35 Edward Hyde, viscount of Cornbury, had been preceded by a brief period in which the Council and Lieutenant-Governor John Nanfan took charge.

36 *Doc. Rel. to Col. N. Y.*, V, 25; cf. *Colonial Laws of N. Y.*, I, 523-4.

37 To the Lords of Trade, June 30, 1704, *Doc. Rel. to Col. N. Y.*, IV, 1111-3.

38 *Doc. Hist. of N. Y.*, I, 381-2. Cf. Spencer, "Land System of Col. N. Y.," *loc. cit.*, pp. 154-5. Waywanda, Rhinebeck, Minisink, Little Nine Partners, Cheesecock, Hardenburgh, and Kayaderosseras, huge tracts, were granted to favorites for trifling quit-rents. Clarke, whose wife was related to the Clarendons, hence to Lord Cornbury, was made one of the Little Nine Partners. *Doc. Rel. to Col. N. Y.*, IV, 1069n.; V, 110, 407; *D. A. B.*, IV,

the bounds of the Cornbury grants were notoriously vague. The patents containing phrases like: "be it more or less" or "profitable land besides woodland," were issued without actual survey.³⁹ Such laxity permitted claims to be stretched as much as a hundredfold as in the case of the Livingston, Philipse, and Van Rensselaer patents. Colden said that one 300 acre grant became a 60,000 acre claim.⁴⁰ The use of Indian names and of streams that flowed in many directions led to confusion of titles which became the basis for law suits.⁴¹ This confusion of metes and bounds was characteristic of New York until the end of the colonial period.⁴² Colden charged that the great patentees were turning to their own advantage Indian names which were "Either wholly unknown or known to very few Christians and which the Indians change as often as they change their habitations."⁴³ The vagueness and irregularity of such grants led Receiver General Archibald Kennedy and Lieutenant-Governor DeLancey to agitate for reform.⁴⁴ In fact, the additional instructions to Governor William Tryon of February 3, 1774, directed him to follow a system of surveys with lots marked and numbered.⁴⁵ But these efforts were entirely too ineffectual or too late to stay the winds of agrarian

151; Deed Books, X, 188-191; Huntting, I., *History of the Little Nine Partners*, pp. 5-11.

39 Spencer, *loc. cit.*, p. 156.

40 *Ibid.*, p. 156. Cf. Keys, A. M., *Cadwallader Colden, Representative Eighteenth Century Official*, p. 28.

41 Spencer, *loc. cit.*, pp. 156-7; Keys, *op. cit.*, pp. 29-31, 34.

42 Ford, A. C., *Colonial Precedents of Our National Land System as It Existed in 1800*, chap. I; Van Schaack, H. C., *Memoirs of the Life of Henry Van Schaack Embracing Selections from His Correspondence During the American Revolution*, pp. 23-4.

43 *The Letters and Papers of Cadwallader Colden, 1711-1775*, VIII, 161-2 (hereafter *Colden Papers*); cf. *Doc. Rel. to Col. N. Y.*, V, 644, 654.

44 1752 and 1754 respectively. Ford, *op. cit.*, pp. 34-5; *Doc. Hist. of N. Y.*, IV, 1052.

45 *Doc. Rel. to Col. N. Y.*, VIII, 410-3. Governor Benning Wentworth theoretically had followed such a system in the New Hampshire grants. Ford, *op. cit.*, p. 34.

controversy which blew so violently over Livingston Manor, Rensselaerswyck, and Philipse's Highland Patent, when Indians, Yankee speculators, and their settlers challenged the extent of these domains.

From John, Lord Lovelace⁴⁶ to George Clinton,⁴⁷ (1708 to 1753), the governors of the first half of the century seemed almost virtuous in comparison with Fletcher and Cornbury. Yet the deeds of some of them are set off in somewhat dark contrast to the relative integrity of Lovelace, Hunter, and Burnet. The instructions on land grants that came to Lovelace, governor from December 1708 to May 1709, substantially like those of Bellomont,⁴⁸ set a maximum of two thousand acres with quit-rents of two shillings sixpence per hundred acres; provided for three acres of cultivation for every fifty acres within three years under pain of forfeiture; and reminded the governor of the confirmation of Bellomont's act vacating extravagant grants.⁴⁹ Robert Hunter, governor from 1710 to 1719, received similar instructions as did all other governors down to 1753⁵⁰ when the maximum limit was lowered to one thousand acres. Hunter seemed disposed to abide by his instructions; for he complained to the Lords of Trade that the owners of vast estates were keeping New York depopulated "in hopes of Planting them with Tenants of their own, which is never to be expected in a Country where the Property may be had at so easy Rates."⁵¹

46 The governors who followed were Hunter, Burnet, Montgomerie, Cosby (George Clarke, president, then lieutenant-governor) and Clinton.

47 Not to be confused with George Clinton, revolutionary Governor of New York.

48 *Vide supra*. November 10, 1698, *Doc. Rel. to Col. N. Y.*, IV, 425.

49 *Ibid.*, V, 54; *Doc. Hist. of N. Y.*, I, 377-381.

50 He had been preceded *pro tem.* by Peter Schuyler, Richard Ingoldesby, and Gerardus Beekman. *Cf. Doc. Rel. to Col. N. Y.*, V, 141, 650-4; VI, 790.

51 Nov. 14, 1710, *Doc. Rel. to Col. N. Y.*, V, 180. Hunter made little change in the administration of the land office. Spencer, *loc. cit.*, p. 159. He was an unusually popular governor. *D. A. B.*, IX, 401-2.

But after William Burnet, who was singularly free from avarice,⁵² the administration of land was directed by men who lacked his scruples. John Montgomerie, governor from 1728 to 1731, accepted a 750 pound gift for the Oblong patent.⁵³ William Cosby, who governed from 1732 to 1736, blithely helped himself to one third of the lands patented by him.⁵⁴ The effects of his land policy were described by the Chief Justice, Lewis Morris, himself a landowner of means,⁵⁵ as follows: "first, engrossing great Tracts of Land into few hands, 2nd rend[r]ing it very difficult if not impracticable for any but a certain class of Men to come at them, 3rd rendring them so dear that . . . it will not be worth the while even of those few that can come at them, to meddle with them, there being better lands and much cheaper to be purchased in Jersie and Pennsylvania."⁵⁶ Ironically enough, Cosby removed Morris from office partly for sitting in a case that involved his own land, a charge which the justice denied.⁵⁷

George Clarke⁵⁸ and George Clinton,⁵⁹ no better than some of their predecessors, overstepped the line of morality in many of their land transactions. From March to October 1736, Clarke, kinsman of Cornbury, abused his office to enrich him-

⁵² After Hunter and Peter Schuyler, Burnet governed from September 17, 1720 to April 15, 1728. Cf. *D. A. B.*, III, 295.

⁵³ See Spencer, *loc. cit.*, p. 161. This was 50,000 acres on the eastern border of what was then Dutchess, parts of Albany and of Westchester. It was given to Thomas Hawley, *et al.*, on June 8, 1731.

⁵⁴ After about one year of Van Dam, Cosby governed. See *Doc. Rel. to Col. N. Y.*, V, 953.

⁵⁵ He, his son, and associates had received from Burnet patents totaling 17,500 acres. French, *op. cit.*, p. 50.

⁵⁶ *Doc. Rel. to Col. N. Y.*, V, 953.

⁵⁷ *The Case of Lewis Morris, Esq., Late Chief Justice of the Province of New York . . .*, [London, 1735]. Myers believes there were extenuating circumstances. Myers, *Hist. of the Supreme Court of U. S.*, p. 35.

⁵⁸ He served as president from March 10, 1736 to October 30, 1736; then as lieutenant-governor to September 22, 1743 with a brief interruption by John West, June to Sept., 1737.

⁵⁹ *Vide supra*, n. 47.

self. He unscrupulously made himself the beneficiary of grants in excess of the 2,000 acre restriction through the use of "dummy" partners. By this practice he was able to amass an estate valued at £100,000 at the time of his death.⁶⁰

Indeed, one of his transactions, which haunted the New York Supreme Court over a century later, was painted by the attorney-general as a picture of fraud and greed which lost none of its vividness with the passage of time.⁶¹ Apparently, Lieutenant-Governor Clarke, despite his office, had the Council create a trust consisting of 100,000 acres in the Mohawk Valley for the use of himself and his "dummy" who eventually released the bulk of the land to him.

George Clinton, governor from 1743 to 1753, likewise reserved shares of land grants for himself through fictitious names. In addition, he charged extremely high fees for land patents, twelve pounds, ten shillings for every thousand acre grant. This governor, none too scrupulous in financial matters, "set the precedent for high fees since demanded for land patents, and boldly relied upon the interests of his patrons to screen him from reprehension." He returned to England with a fortune of £84,000.⁶² In the use of "dummies" to circumvent restrictions on grants and in the disposal of public lands to build private fortunes in fees, Clarke and Clinton anticipated the practices of New York governors in the New Hampshire Grant region.

The malpractices which tainted many of the colonial land transactions affected at least four regions which became the scenes of agrarian conflicts: Livingston Manor, Philipse Patent,

⁶⁰ Smith, William, *History of the Late Province of New York*, II, 68; Hall, H., *Hist. of Vt.*, pp. 71-2.

⁶¹ *New York v. Clarke* (Nov. 25, 1850), 10 Barbour's Supreme Court Reports N. Y. 120. Judge Cady held the action barred by statute of limitations. It was alleged that Clarke presented the petition of William Corry and his associates. He then left the room while the Council decided to approve the grant which was a trust for the use of Corry and Clarke. On February 18, 1738, Corry released the bulk of the land to Clarke.

⁶² Smith, W., *Hist. of N. Y.*, II, 158-9, 166-7.

Rensselaerswyck, and the New Hampshire Grant area. Whatever resentment the size of the grants bred was intensified by the circumstances in which they were acquired. A survey of these circumstances lays bare illegality and fraud.

From this taint Robert Livingston, first lord of the manor, was not entirely free. As secretary of the board of commissioners of Indian affairs, to which office he was appointed in 1675, Livingston was excellently situated to curry favor with different governors who helped him acquire thousands of acres of land.⁶³ Governor Edmund Andros approved of his petition to purchase from the Mohicans, who sold him a tract of 2,000 acres on Roeliff Jansen Kill;⁶⁴ Governor Thomas Dongan sanctioned his 600 acre Indian purchases of "Tachkanick," permitting him in 1686 to unite the two units into a manor.⁶⁵ By describing the boundaries of his grants with the Indian names of natural objects like "Mahaskakook" or "minnis-sichtanock where Two Black oak Trees are marked wt L," or Wawanaquassich where "Heapes of stones Lye," and by a stream like the winding Roeliff Jansen Kill, "Running back into the woods," Livingston was able to present his tracts as contiguous. Thus Dongan's patent for the manor enabled Livingston to stretch 2,600 acres of land on Roeliff Jansen Kill and in the Taconic (formerly Taghkanick) Mountains over more than 160,000 acres.⁶⁶ Small wonder that the Stockbridge

⁶³ *Doc. Hist. of N. Y.*, III, 725-8 n.

⁶⁴ Patent for 2,000 acres issued Nov. 4, 1684, *Doc. Hist. of N. Y.*, III, 615-6, also pp. 611, 612, 628. Patent in original manuscript. Redmond-Livingston Mss.

⁶⁵ Patent, August 27, 1685, *Doc. Hist. of N. Y.*, III, 617-622; July 22, 1686, *ibid.*, III, 622-7; original patent in Redmond-Livingston Mss.

⁶⁶ *Doc. Hist. of N. Y.*, III, 616, 621, 622, 624, 690-702, map opp. p. 690. Even though Andros and Dongan usually required a survey, description with Indian nomenclature led to confusion. Higgins, *op. cit.*, p. 21. This manoeuvre of Livingston's left Indian title to about 158,400 acres in between the two tracts in its original state. In 1853 the attorney-general reported, "to over 150,000 acres of the Livingston manor . . . the Indian title whatever it was seems to remain in its original state." N. Y. State Assembly Committee on Indian Affairs, *Report . . . on the Claims of the Mohawk and Stockbridge Indians*,

Indians and their grantees and lessees subsequently challenged Livingston's title. All of this he acquired for the ridiculously low sum of 930 guilders in wampum (\$375), \$200 in axes, kettles, knives, blankets, and similar commodities. His quit-rent was only twenty-eight shillings annually since he was "at Vast Charges and Expence. . ." ⁶⁷ Some have condoned the small consideration paid for such vast estate on the ground that the land was undeveloped. ⁶⁸ But it is not without significance that 6,000 acres of this land were reconveyed to the crown in 1710, twenty-four years later, for 400 pounds sterling. This left the residue virtually a gift. ⁶⁹

The dexterity with which Livingston converted his poverty into riches led Governor Fletcher, a hostile witness, to remark that "he has made a considerable fortune . . ., never disbursing six pence, but with the expectation of twelvepence, his beginning being a little Book keeper, he has screwed himself into one of the most considerable estates in the province. . . he had rather be called knave Livingston, then [*sic*] poor Livingston." ⁷⁰ Family and political connections lent social prestige to his fortune. Husband of the widow of his employer, Domine Nicholas Van Rensselaer, a sister of Peter Schuyler, Livingston held office as executive councilor, speaker of the As-

no. 106 (1854), p. 10; N. Y. State Assembly, *Report of the Attorney-General* . . ., no. 59 (1853), p. 8; and N. Y. State Assembly, *Report of the Select Committee* . . ., no. 79 (1853), pp. 2-4. For whole account, see Livingston, E. B., *The Livingstons of Livingston Manor*, pp. 107-111. In *People of N. Y. v. Herman Livingston*, Judge Wright of the Supreme Court in 1850 denied fraud on the face of the record.

⁶⁷ Pope, F. L., *op. cit.*, p. 48.

⁶⁸ Cf. Goebel, J., Jr., "Some Legal and Political Aspects of the Manors in New York," Order of Colonial Lords of Manors in America, *Publications*, no. 18 (1928), p. 17; Knittle, *The Early Eighteenth Century Palatine Emigration*, p. 157.

⁶⁹ *Doc. Hist. of N. Y.*, III, 644; original indenture, Sept. 29, 1710, in Redmond-Livingston Mss.

⁷⁰ *Doc. Rel. to Col. N. Y.*, IV, 251. This is rather ironical coming from Fletcher, in view of his own aptitude in using public office for private gain.

sembly, and mayor of Albany.⁷¹ Even Governor Bellomont, destroyer of extravagant grants, befriended him, although in a moment of anger he charged Livingston with having "pinch'd an estate out of the poor soldiers bellies" ⁷² through fraudulent rationing contracts. Governor Hunter favored him by confirming the patent to his manor and by authorizing the manor to send a representative to the Assembly.⁷³ The Governor also settled the Palatines on the 6000 acre tract purchased from him. Furthermore, Livingston was permitted to sell them food, tools, and other provisions. Inspector Cast found the food inferior in quality and shortweighted.⁷⁴ Although Livingston drew a salary from 1710 to 1713 as an inspector of Palatines, he engaged in a money lending business with his charges.⁷⁵ Even after his death, Livingston claims pursued the Germans to Canajoharie and were blocked solely by the intervention of Sir William Johnson.⁷⁶ These were some of the ways in which Livingston swelled his estate. The resentments that they aroused added fuel to the Palatine uprisings and to the Indian and small-farmer agitation on the Manor.

Like Livingston Manor, Philipse's Highland Patent involved an Indian fraud which had many later repercussions in the Nimham controversy and the great rebellion of 1766.⁷⁷ On June 17, 1697, the notorious Fletcher, who granted Van Cort-

⁷¹ *D. A. B.*, XI, 318-9; Nissenson, *The Patroon's Domain*, p. 293.

⁷² *Doc. Rel. to Col. N. Y.*, IV, 720.

⁷³ Oct. 1, 1715, *Doc. Hist. of N. Y.*, III, 690-702. Original patent in Redmond-Livingston Mss.

⁷⁴ *Doc. Rel. to Col. N. Y.*, V, 180; *Doc. Hist. of N. Y.*, III, 660, 674; Knittle, *Early Eighteenth Century Palantine Emigration*, pp. 160, 167-9; N. Y. Colonial Mss, LXVII, 124a. *Vide infra*.

⁷⁵ Knittle, W. A., *op. cit.*, p. 166.

⁷⁶ Ellsworth, W. W., "The Palatines in the Mohawk Valley," N. Y. State Hist. Assoc., *Proceedings*, XIV (1915), 304.

⁷⁷ *Vide infra*. *Nimham v. Philipse, et al.* Handlin, "The Eastern Frontier of New York," *loc. cit.*, p. 52, contains an excellent brief statement of the fraudulent nature of the grant.

landt's Manor on the same day,⁷⁸ gave Adolphe Philipse "a certain tract of vacant land on the east of Hudson's River in Dutchess County, beginning . . . on the north side of the hill called Anthony's Nose and stretching . . . to the land of Col. Courtland and Co. and stretching backwards from said river into the woods, so far as the land of Col. Courtland and Co."⁷⁹ This extended to the Connecticut boundary and included about 205,000 acres.⁸⁰ But Philipse made his title through a deed of the Wappingers to Lambert Dorland and Jean Seabrant. This deed called for a tract of only 15,000 acres which was bounded "eastward into the woods . . . to a marked tree."⁸¹ Thus, by omitting the reference to the marked tree, the eastern terminus in the patent, Philipse carried his boundary to the Connecticut River and included 190,000 acres which really belonged to the Indians.⁸²

The subsequent behavior of Philipse indicated that he realized, in absence of a valid purchase of the Indian title, he had not acquired title to all the land that his patent included. He tried to run a surveyor's line but the Indians blocked him and allowed him to proceed only when he pleaded that it was a "colony line."⁸³ He unsuccessfully tried to buy the remainder of the land for which he had no Indian deed. Even if such a purchase had been made on August 13, 1702 by an "Indian

⁷⁸ June 17, 1697, Patent Books, VII, 145; Van Wyck, F., *Select Patents of Towns and Manors* (Boston, 1938), p. 101; *Doc. Rel. to Col. N. Y.*, IV, 327, 506, 514.

⁷⁹ Philipse-Gouverneur Land Titles (Col. U.), no. 14.

⁸⁰ A Geographical, Historical Narrative or Summary of the Present Controversy between Daniel Nimham . . . and . . . Legal Representatives of Colonel Frederick Philipse . . .," British Museum Lansdowne Mss, Vol. 707, fol. 25, pp. 3-4; fol. 44, p. 42 (Library of Congress transcript). For map showing disputed region, *ibid.*, fol. 24, p. 1.

⁸¹ The deed dated July 15, 1691 and the release from Seabrant and Dorland dated June 16, 1697 are in Philipse-Gouverneur Land Titles, no. 14.

⁸² Geographical, Historical Narrative, fols. 25-26, pp. 4-5.

⁸³ See attorney's statement of the case of Nimham, Land Papers, XVIII, 128; Philipse-Gouverneur Land Titles, no. 13; Geographical, Historical Narrative, fols. 39-41, pp. 31-5; fol. 45, pp. 43-4.

Deed," as his heirs later maintained, this could not have been valid since his patent had been obtained five years before he had secured a license for and registered his Indian purchase, whereas the laws of the province required prior licensing and registration of such a purchase.⁸⁴ When Philipse's tenants, trying to settle there, ran into difficulty with the Indians, Philipse admitted he had no title and urged them to make agreements with the Indians. Adolphe Philipse never changed this admission down to his death. Nor did his heirs attempt to take possession until after the French and Indian War.⁸⁵ By that time their efforts had aroused opposition which stirred the eastern Hudson Valley into violent uprisings.

The huge domain of the Van Rensselaers, no less than the domains of the Livingstons and the Philipses, was involved in Indian claims which played an important part in agrarian uprisings. The manor, which had been created out of the patroonship by Dongan in 1685 and confirmed by Cornbury in 1704, was bounded with vague metes and bounds.⁸⁶ Thus, whether the Van Rensselaer claim to the region north of Livingston Manor was legitimately 20,000 or 300,000 acres hinged upon the location of "Wawanquasick," the Indian word for a "place called a heap of Stones."⁸⁷ An Indian deed described by Mrs.

84 Ruttenber, E. M., *Indian Tribes of Hudson's River*, pp. 329-330. In fact this deed was not produced until 1767. Just as Nimham's lawyer was going to point out a fraud in the deed it was snatched from him. Attorney's Statement of the Case for Nimham, in Philipse-Gouverneur Land Titles, no. 13. See also Geographical, Historical Narrative, fols. 45-48, pp. 44-9; Smith, William, *Hist. of N. Y.*, I, 35; Handlin, *loc. cit.*, pp. 52-3, n. 9.

85 Attorney's Statement of the Case for Nimham, in Philipse-Gouverneur Land Titles, no. 13. See also Geographical, Historical Narrative, fol. 25, p. 3; fol. 26, p. 5. The later controversy will be discussed below. For this "extravagant" grant of the Highland, as well as for those of Cortlandt, Beekman, the Great Nine Partners, Kakiate, Morrisania, and Nassau, Bellomont could never forgive Fletcher. Bellomont wrote that Chief Justice William Smith got his fifty mile long tract in Nassau Long Island, "arbitrarily and by strong hand." *Doc. Rel. to Col. N. Y.*, IV, 535.

86 *Vide supra*, n. 8.

87 "Notes of Evidence, with Some Notes of the Arguments . . . King against John Van Rensselaer for an Alleged Intrusion . . . in the Rear of

Grant, a keen contemporary observer, further illustrates the vagueness of bounds: "We exchange with our brother Cornelius Rensselaer . . . the lands beginning at the beaver creek, going northward, to the great fallen plane tree, where our tribe slept last summer; then eastward, to the three great cedars on the hillock; then westward, strait to the wild duck swamp; and strait on from the swamp to the turn in the beaver creek where the old dam was."⁸⁸

At the great Albany conference in 1754 over which Lieutenant-Governor DeLancey presided, Van Rensselaer, as well as Livingston, was amongst those few against whom Captain Hendrick Aupaumut stated Indian grievances:

Fathers: Don't think strange at what we are about to say; we would say something respecting our lands; when the White people purchased from time to time of us, they said they only wanted to purchase the low lands, they told us the hilly land was good for nothing, and that it was full of wood and stones, but now we see people living all about the Hills and woods, although they have not purchased the lands—when we inquire of the people who live on the(se) lands, what right they have to them, they reply to us, that we are not to be regarded, and that these lands belong to the King; but we were the first possessors of them, and when the King has paid us for them, then they may say they are his; hunting now is grown very scarce, and we are not like to get our livings that way; therefore we hope our Fathers will take care that we are paid for our lands, that we may live.⁸⁹

Imbued with this feeling, Indians frequently sold titles which set up rival claims to land which allegedly had been previously

Kinderhook—1768" (N. Y. Hist. Soc.); "Westenhook, Reasons to Support of the Objections of the Inhabitants of Kings District . . . 1771," John Tabor Kempe Papers (N. Y. Hist. Soc.), Box. I. See below, p. 160, n. 136. Colden said of Van Rensselaer, "He claims a Tract of 170,000 acres, whereas they (his neighbors) and I believe truly, think that he had only 23,000 acres Granted." Colden to Lords of Trade, May 31, 1765, Colden, C., *Colden Letter Books*, II, 11.

⁸⁸ Grant, Mrs. A., *Memoirs of an American Lady*, II, 152-3.

⁸⁹ *Doc. Rel. to Col. N. Y.*, VI, 881.

sold. The Wappinger⁹⁰ claim against Philipse and the Stockbridge claims against Livingston and Van Rensselaer were, as shall be shown, inextricably involved in the anti-rent and boundary disputes which swept over the eastern part of the Hudson Valley.

Not without reason did Indians or their later grantees make these claims. Credulous or drunken Indians had on many occasions been led to sell their patrimony for a song: witness the purchases of Livingston, Bayard, and Dellius. In such grants, governors usually reserved one-third of each grant as their share.⁹¹ No wonder the instructions to break obnoxious ones fell on deaf ears.⁹² Colden voiced a colonial commonplace when he wrote: "Strong suspicions of Fraud are apparent on the face of these Grants and more so in the purchase of the Lands from the Indians on which they are founded: & perpetually complained of by the Indians."⁹³

Three grants involving Indian frauds are especially noteworthy because they permitted Johnson to play a significant role as patron of the Indians. In this capacity he was frequently asked to assist John Van Gelder and Stockbridge tenants against the Livingstons and Van Rensselaers, and the Wappinger Chief Nimham and his tenants against the Philipses. One such grant was the Klock claim to Canajoharie which was

⁹⁰ Ruttenber, *op. cit.*, pp. 253, 329-330.

⁹¹ Lewis Morris to the Lords of Trade, Aug. 27, 1733, *Doc. Rel. to Col. N. Y.*, V, 953; De Lancey to same, Dec. 24, 1753, *ibid.*, VI, 818. See also *ibid.*, IV, 345; V, 569; VI, 851, 962; VII, 87, 130, 260, 301, 576.

⁹² *Ibid.*, IV, 391-94, 720; V, 472, 650-54; VI, 788-91; VII, 77, 117, 677, 701; Labaree, L. W., *Royal Instructions to British Colonial Governors, 1670-1776*, II, 578, sec. 819.

⁹³ *Colden Letter Books*, II, 69. For example, when the Lenapes were to sign the deed of sale of Minisink lands to Depuy, it was alleged that "he made them drunk, and never paid them the money agreed upon." Naturally the Indians frequently complained of the fraud, and declared that they would never rest until they had satisfaction for their lands. From Mss of Sir William Johnson, XXIV, 14 (missing); quoted in Ruttenber, E. M. and Clark, L. H., *History of the County of Orange, New York*, p. 15.

acquired by getting the Indians drunk ⁹⁴ and was buttressed by the purchase of a grant to Philip Livingston who the Indians claimed had robbed them by a "moonlight survey." ⁹⁵ Another was the huge Cornbury patent to Kayaderosseras. ⁹⁶

The third was a claim to land north of the Saratoga patent acquired in 1732 by John Henry Lydius ⁹⁷ of whom an Oneida sachem remarked to Johnson at an Indian conference in 1755:

Brother. You promised that you would keep this fire place clean from all filth and that no snake would come into this Council Room. That man sitting there (pointing to Coll: Lyddius) is a Devil and has stole our Lands, he takes Indians slyly by the Blanket one at a time, and when they are drunk, puts some money in their Bosoms, and perswades them to sign deeds . . . ⁹⁸

⁹⁴ *Cal. of Coun. Min.*, p. 394; Council Minutes, XXIII, 200; *The Papers of Sir William Johnson*, III, 311-314; Patent Books, XIII, 69, 72; Land Papers, XV, 111, 127; also Wraxall, P., *An Abridgement of the Indian Affairs*, p. 179.

⁹⁵ Sir William Johnson believed that Klock's claim *via* Livingston was bad. He pointed out the people on the land continued to pay rent to the Indians. *Colden Papers*, VI, 17-20. See also *Colden Letter Books*, I, 70; II, 12-13; Patent Books, XI, 53-54; Land Papers, IX, 159; X, 33, 57, 58, 84, 114, 120; XI, 3, 4, 11, 13; Council Minutes, XV, 30, 174, 224, 317; XVI, 18, 152; Wraxall, *op. cit.*, pp. 185-6.

⁹⁶ The patent, made out to Manning Harmense, *et al.*, swept from the Mohawk opposite Schoharie to the east bend of the Hudson. Patent Books, VII, 380. A copy of the Indian deed, dated Oct. 6, 1704, is in *Colden Papers*, VI, 359-360. Cf. Land Papers, III, 122; IV, 31, 34, 42, 62, 74, 81, 87, 89; Council Minutes, X, 5, 93, 229, 245; *Doc. Rel. to Col. N. Y.*, VII, 567, 576, 671. In a letter, March 12, 1762, to Robert Leake, Johnson advised against taking any interest in these lands as the patent was thought to have been surreptitiously obtained. *Papers of Sir William Johnson*, III, 645. Cf. *Colden Letter Books*, II, 19; J. T. Kempe to Wm. Johnson, August 12, and September 23, 1765, John Tabor Kempe Papers, Box I.

⁹⁷ *Cal. of Land Papers*, p. 601; Council Minutes, XXI, 85; XXV, 4, 335, 363; Feb. 14, 1761, report of Council Committee adverse to the claims on Wood and Otter Creeks, *Cal. of Hist. Mss*, II, 719; also 727; Feb. 18, 1761, proclamation forbidding settlement on above named Lydius claims, *ibid.*, II, 719.

⁹⁸ *Doc. Rel. to Col. N. Y.*, VI, 984; cf. Wraxall, *op. cit.*, pp. cvii-cviii. Johnson's apologetic tone for Lydius' behavior which was admitted as faulty

The Lydius claim, supported at first by Massachusetts and then by New Hampshire, both of which contested New York's jurisdiction over the area, led Colden to warn, "While the Jurisdiction of his Majesties Governments remains thus contested . . . lawless people may take advantage of it, & settle in those parts of the Country without any regard to the Authority of any Government, under the pretence of Indian Purchases, which, I believe, is the present case."⁹⁹ This admonition anticipated a danger which became real when "lawless" settlers without regard to New York's claim took New Hampshire titles from Yankee speculators. In all three cases, thanks to Johnson's persistence, effective steps were finally taken against the grantees.¹⁰⁰

In all of these Indian land troubles, none appeared more determined to prevent the despoiling of Indians by others than Sir William Johnson. For this very reason, many Indians and discontented tenants who sought relief from the Livingstons, Philipses, and Van Rensselaers by buying disputed Indian titles, invoked his assistance. Yet his insatiable land hunger led him to secure large cessions from them for his own enrichment.¹⁰¹ At the very time he was protecting the Mohawks

greatly angered Governor Shirley under whose orders Lydius was acting. *Ibid.*, pp. cviii-cxi, 246, 248; *Doc. Rel. to Col. N. Y.*, VI, 986-987; also pp. 993-7, 1022-8; VII, *passim*.

⁹⁹ To Lords of Trade, Feb. 28, 1761, *Colden Letter Books*, I, 66; *Doc. Rel. to Col. N. Y.*, VII, 456.

¹⁰⁰ The Klock, Kayaderoseras and Lydius controversies can be traced through the following: *Papers of Sir Wm. Johnson*, Vols. I, III-VI; Day, R. E., *Calendar of the Sir William Johnson Manuscripts in the New York State Library*; *Colden Papers*, Vols. VI, VII; *Colden Letter Books*, Vol. I; *Cal. of Hist. Mss*, Vol. II; *Doc. Rel. to Col. N. Y.*, Vols. VI-VII; J. T. Kempe to Johnson, January 31, and March 11, 1769, John Tabor Kempe Papers (N. Y. Hist. Soc.), Box I; material on *King v. Klock*, *ibid.*, Law-suits, J-L; Duane to Johnson, May 9, 1768, Duane Misc. Mss (N. Y. Hist. Soc.); Stone, W. L., *The Life and Times of Sir William Johnson, Bart.*, II, 40-1, 176-184, 299-302. For orders to arrest Lydius and his conviction for intrusion, see parchments *King v. J. H. Lydius* (Hall of Records, N. Y. C.).

¹⁰¹ *D. A. B.*, X, 127. Arthur Pound considers all the Johnson patents

against the Klocks and the Kayaderosseras patentees, he was asking Pownall to procure a royal patent for him to a Canajoharie tract.¹⁰² His petition for 40,000 acres was rejected; but a royal grant of Kingsborough followed on April 16, 1765.¹⁰³ This contained a total of 92,000 acres of which 12,000 were alleged by the insinuation of his enemies to be in Kayaderosseras.¹⁰⁴ Even Colden, determined to save the Indians' land for them from their enemies but not from their friends, wrote to Johnson, "it may be proper in case your Tract exceeds that quantity [*i.e.* the 2,000 acre limitation], to think of some other name for the remainder. . ." ¹⁰⁵ He advised Johnson to scorn the calumny that followed the royal grant.¹⁰⁶

Sir William Johnson died one of the largest proprietors in America.¹⁰⁷ He had not scrupled to use those devices for which he condemned others most vociferously. For example, "dummies" enabled him to evade the restrictions upon the size of grants. Thus on February 2, 1768, Governor Moore patented about 25,000 acres in the Lake Oneida region for the use of Peter Servis and twenty-four others. These, after title had vested in them, promptly turned the whole tract over to Johnson in accordance with an agreement that they would hold the land in trust for him in return for his payment of fees amount-

"justifiable" on the grounds that the Indians preferred Johnson to Ury Klock and that the former was a "state-builder" rather than a "land-grabber." *Johnson of the Mohawks*, pp. 351-4; cf. Stone, *Life and Times of Sir Wm. Johnson*, II, 323-5.

102 Johnson to Pownall, April 4, 1763 and April 18, 1763, *Papers of Sir Wm. Johnson*, IV, 78, 88-91; also III, 386-8.

103 Schuyler, *Colonial N. Y.*, I, 118; French, *op. cit.*, p. 51; *D. A. B.*, X, 127. The royal grant was described as containing 66,000 acres though it appears to have been larger.

104 Marsh's letters of Dec. 11, 1763; also those of Feb. 19, 1764, March 26, and April 8, 1765, *Cal. of Sir Wm. Johnson Papers*, pp. 193, 205.

105 Colden *Letter Books*, I, 406.

106 Colden to Johnson, June 13, 1765, *Cal. of Sir Wm. Johnson Papers*, p. 272; cf. Keys, A. M., *Cadwallader Colden*, pp. 84-5, 91-2, 100.

107 *D. A. B.*, X, 124.

ing to £600 and of other valuable considerations.¹⁰⁸ This strategem appeared to be quite common amongst the "big interests" of the day.¹⁰⁹

From the close of the French and Indian War to the Declaration of Independence, the center of interest of land transactions shifted to the unpreempted region east of the Hudson, and Lakes George and Champlain in the counties of Albany, Charlotte, Cumberland, and Gloucester.¹¹⁰ Four men governed the province in this period: Cadwallader Colden, Sir Henry Moore, John Murray, Earl of Dunmore, and William Tryon.¹¹¹ Of these, Colden was intermittently in control for more than five of the thirteen year span.¹¹² Having served as surveyor-general, councilor, and lieutenant-governor of New York, he had vast experience in land affairs. He had frequently thundered against excessive and fraudulent grants, vague and

108 These facts were brought out in a case in the court for trial of impeachments and correction of errors in February, 1798. Herman LeRoy and William Bayard tried to buttress their claim to Johnson's land. *LeRoy v. Veeder et al.*, I Johnson's Cases 417; *Laight v. Morgan et al.*, I Johnson's Cases 429. The court held the old litigation was "dead" letter on appeal. *LeRoy v. Servis*, I Caine's Cases iii; 2 *ibid.* 175.

109 Volwiler, A. T., *George Croghan and the Westward Movement, 1741-1782*, pp. 249-251. For example on June 27, 1767, Croghan and 39 nominal "associates" petitioned for a license to purchase from the Indians 40,000 acres west of Lake Otsego, which was to be deeded to George III in trust "for the sole use and benefit of the petitioners." Interestingly this purchase, approved on July 6, 1767, contained 100,000 acres upon actual survey. On March 15, 1769 Croghan and 99 "tenants in common" petitioned for a patent to the 100,000 acres which was later issued on November 30. Two days later, his 99 associates conveyed to Croghan the whole estate. See also Harrington, V. D., *The New York Merchant on the Eve of the Revolution*, pp. 137-8.

110 See above, p. 20, n. 2 for present names of the region.

111 Colden was president and lieutenant-governor intermittently from August 1760 to June 1762; from June 1763 to November 1765; from September 1769 to October 1770; and from April 1774 to June 1775. Moore was governor from November 1765 to September 1769; Dunmore, from October 1770 to July 1771; Tryon, from July 1771 to April 1774; and from June 1775 to March 1780.

112 From June, 1763 to July, 1776, Colden governed about five years; Moore, less than four; Dunmore, over a year; and Tryon, about four years.

over-lapping boundaries, and the high politics of grasping landlords.¹¹³ Yet not one of these four appeared more zealous to distribute land than Colden. His zeal led Watts to remark in 1764, "'Tis well we have been combatting the old man about his thirst for granting or not an inch would have been left."¹¹⁴ By 1776 all four had disposed of 2,115,610 acres of land in the New Hampshire Grant region (exclusive of military patents) of which Colden had granted 965,500 acres.¹¹⁵

Colden, unlike Clarke, seems to have scrupulously avoided making excessively large grants to himself;¹¹⁶ but, like Clinton, he was interested in the fees he could make in new grants.¹¹⁷ He collected \$30,171.81 in fees for the grants in the Green Mountain region, \$31.25 for every 1,000 acre grant. Together with the sums collected by the other three, this totaled \$66,112.74. All other fee-hungry officials involved in these trans-

113 *D. A. B.*, IV, 286-7; *Doc. Rel. to Col. N. Y.*, V, 807; *Doc. Hist. of N. Y.*, I, 297; Spencer, *op. cit.*, p. 160; *Colden Letter Books*, II, 69-70.

114 Watts to Monckton, Nov. 6, 1764, "Aspinwall Papers," Massachusetts Hist. Soc., *Collections*, 4th series, X (1871), 538.

115 This as well as the other figures dealing with New York grants in Vermont are based upon the excellent work of Hall, Hiland, "New York Land Grants in Vermont 1765-1776," *Collections of the Vermont Historical Society*, I, 145-159.

116 There seems to be some conflict of opinion on how much land he acquired. R. C. Benton says he acquired only 9,000 acres. *The Vermont Settlers and the New York Land Speculators*, p. 26; cf. Hall, B. H., *Hist. of Eastern Vermont*, II, 564-65, quoting "Report of the N. Y. Commissioners, 1797," pp. iii, 113. Grants to his family in the region totaled at least 8,000 acres. Cf. Patent Books, XV, 111, 342, 405; XVI, 75. Hiland Hall accuses him of reserving for himself in the names of others 20,000 acres of land. "He was always, indeed, quite willing to enrich himself and his numerous family at the expense of the public, and not a little ingenious in devising ways to accomplish it..." *Hist of Vt.*, pp. 73, 100. The testimony on David Colden's claims places the figure at 18,000 acres by 1770 for the Lieutenant-Governor's properties in Charlotte, Cumberland, and Gloucester Counties. *American Loyalist Transcripts* (N. Y. P. L.), XIX, 431-457, esp. 446.

117 E. P. Alexander concludes that Colden wanted to break up large grants but "he was also interested in the fees he would make in the new grants..." "Provincial Aristocracy and the Land," in Flick, A. C., ed., *History of the State of New York*, III, 157.

actions collected a grand total of \$124,820.99.¹¹⁸ Little wonder that patentees like Skene resented this official mulcting.¹¹⁹ Nor did dignity of office deter Governor Dunmore from acting as judge in his own cause for one-half the sum Lieutenant-Governor Colden had collected between the time of the former's appointment and his arrival in New York. Dunmore desisted only after four judges had advised him to decide for Colden in April, 1771.¹²⁰ Fee hunger was reflected by the fact that many of the grants, especially Governor Moore's, were mere confirmatory ones and conveyed no new title.¹²¹ The Lords of Trade complained to the Privy Council on December 3, 1772, that the fees were "more than double what that Ordinance [*i.e.* of 1710] allows."¹²²

If Colden indulged in no lavish grants to himself, he sometimes favored his relatives and friends.¹²³ James Duane, his

118 The fees for every 1,000 acres patented were: for the governor, \$31.25; the secretary of the province, \$10.00; the clerk of the council, \$10.00; the auditor, \$4.62½; receiver-general, \$14.37½; the attorney-general, \$7.50; and the surveyor-general, \$12.50; the total, \$90.25. Hall, H., "N. Y. Land Grants in Vt.," *loc. cit.*, pp. 147-8.

119 Watts described Skene as complaining, "They make him pay about £700 patent fees, Govr. £312, 10s—Secretary's Off. £100, Sur. Genl. £175. &c: and all this for his 25,000 acre tract only—I wish you was here." Watts to Monckton, March 30, 1765, "Aspinwall Papers," *loc. cit.*, p. 568.

120 Dunmore arrived on Oct. 18, 1770 with a letter from Hillsborough ordering Colden to pay one half the fees collected since January 2, 1770. *Doc. Rel. to Col. N. Y.*, VIII, 209, 249, 256-7. Colden tried to remove the action but Duane persuaded him to argue the case. *Colden Letter Books*, II, 232-9, 273. Cf. Alexander, *James Duane*, pp. 31-3.

121 Hall, H., "N. Y. Land Grants in Vt.," *loc. cit.*, p. 151.

122 *Doc. Rel. to Col. N. Y.*, VIII, 336.

123 Colden to Lords of Trade, Nov. 10, 1764. "Now it will appear that of thirty children & Grand children now alive, only three have received any Grant of Land from me, & that of Land long since purchased of the Indians & to which they make no pretensions." *Colden Papers*, I, 401; Keys, A. M., *Cadwallader Colden*, p. 95. In trying to wrest Claverack from an excessive claim of Van Rensselaer, he was at the same time desirous of furthering his son's claim to a military patent in the region. He laid claims, including his son's, before the Council which rejected them pending the determination of the Van Rensselaer claim. Colden to Lords of Trade, May 31, 1765, *Colden Letter Books*, II, 11. Cf. Keys, *op. cit.*, pp. 101-2.

attorney, and John Tabor Kempe, the attorney-general, were numbered amongst his grantees.¹²⁴ Far more offending were Dunmore and Tryon. The former patented 51,000 acres near Otter Creek, which ran northerly off the Green Mountains toward the present site of Vergennes, to Alexander McLure *et al.* on the day of his surrender of office only to have them deeded to himself five days later;¹²⁵ and Governor Tryon used the names of his son-in-law Edward Fanning and of others to secure two days later 32,000 acres.¹²⁶ Amongst the grantees of all four were, in addition to the above, Goldsbrow Banyar, clerk of the Council, Walter Rutherford, William and Robert R. Livingston, John Morin Scott, Samuel Avery, Simon Metcalf, John Penderleaf—all, with few exceptions, being lawyers, merchants, and professional land-jobbers, rather than settlers.¹²⁷ Furthermore, the revolutionary governor, George Clinton, speculated in these lands.¹²⁸ Land jobbery was especially ap-

124 Hall, H., "N. Y. Land Grants in Vt.," *loc. cit.*, pp. 153-9. For lists of patents and warrants to survey lands granted by Colden mostly in Albany County, Chalmers Collection of Mss (N. Y. P. L.), II, 76; III, 10-11.

125 July 6, and 8, 1771, Patent Books, XVI, 73, 75; July 13, 1771, Deeds, Including Mortgages, and Releases to the State, 1641-1846 (43 vols.), XIX, 3. Amongst those who assisted in this fraud were Alexander Colden, surveyor-general; Andrew Elliott, receiver-general; Hugh Wallace and Henry White, councillors; Goldsbrow Banyar, clerk of Council and deputy of province; Hugh Gaine, public printer; Whitehead Hicks, Mayor of New York City; Crean Brush and James Duane. Hall, H., *Hist. of Vt.*, pp. 101-2.

126 April 14, 1772, Patent Books, XVI, 213; April 16, 1772, Deeds, XIX, 97; Hall, H., *Hist. of Vt.*, p. 104.

127 *Ibid.*, p. 507; Hall, H., "N. Y. Land Grants in Vt.," pp. 146-159; *Doc. Hist. of N. Y.*, IV, 1024-25.

128 Spaulding suggests that Clinton's interest made him an ardent champion of New York sovereignty; whereas Gouverneur Morris, not similarly interested, could not be depended upon to press New York claims. Spaulding, E. W., *His Excellency George Clinton, Critic of the Constitution*, pp. 143-4, 146. See letters of Jan. 19 and Feb. 1, 1779 from Thomas Fanning and Andrew Elliot in Stevens' Facsimiles of Mss in European Archives Relating to America, 1773-1783 (N. Y. State Lib.), Box I, nos. 114 and 115.

parent in the military grants in which James Duane, Goldsbroow Banyar, and Colonel John Reid speculated heavily.¹²⁹

These circumstances suggest that the settlers who took and improved land under New Hampshire grants deserved a better fate than to have their lands included in gerrymandered patents shaped to include the choicest spots.¹³⁰ Furthermore, New York governors made the bulk of their grants in the same region against the expressed command of the Crown, in the opinion of the New Hampshire grantees, and against the repeated instructions of the Lords of Trade.¹³¹ Whatever color of right for making further grants Colden had under the King's Order in Council of July 20, 1764, which made the Connecticut River the eastern boundary of New York,¹³² Governor Moore was

129 Hall, H., "N. Y. Land Grants in Vt.," *loc. cit.*, pp. 148-9. Of 312 claims for military patents covering over 117,000 acres, only five covering 7,400 were in the names of original grantees. "Report of N. Y. Commissioners on Land Claims in Vermont, 1797," cited in Hall, H., *Hist. of Vt.*, pp. 79-80.

130 For example, the Princetown patent owned by James Duane, John T. Kempe, *et al.* covered most of the settlements in Arlington, all in Manchester, some in Sunderland. The shape was not square but irregular to include the best lands. Hall, H., *Hist. of Vt.*, p. 78, n. 1; Alexander, *James Duane*, map opp. p. 70. For a view more friendly to Colden see Jones, M. B., *Vermont in the Making 1750-1777*, pp. 92-94, 97-103. Benning Wentworth was not beyond enlarging townships to include friends, as in the case of the Newbury charter. *Ibid.*, pp. 45-46.

131 For instructions to New York governors from 1770 to the Revolution "that no part of the lands lying on the western side of the River Connecticut within that district heretofore claimed by" New Hampshire be made, see Labaree, *Royal Instructions to British Colonial Governors*, II, 607, sec. 871. In the early Vermont view, all except 180,620 acres patented before the death of Moore were in violation of the King's order. Hall, H., "N. Y. Land Grants in Vt.," *loc. cit.*, p. 158. The legality of the New York grants has been the cause of mountains of litigation beginning with the polemics of James Duane and the Allens. Hiland Hall, *Hist. of Vt.*, B. H. Hall, *Hist. of East. Vt.*, and R. C. Benton, *The Vt. Settlers and the N. Y. Land Speculators*, discuss this issue in detail from the Vermont point of view. The New York view is best developed by M. B. Jones, *Vermont in the Making*. See also *Vermont v. New Hampshire*, 289 U. S. 593, in regard to the validity of the Order of July 20, 1764 extending New York to the Connecticut River.

132 Benton denies that any such right existed. Benton, *op. cit.*, pp. 33-4. See also Hall, H., *Hist. of Vt.*, p. 77.

believed to have had none after April 1767, when Lord Shelburne, subsequently supported by an order in council, commanded him to make no new grants "of these Lands" and to leave the New Hampshire grantees in quiet possession.¹³³ But Colden and his successors continued to make grants by construing the prohibition as inapplicable to land outside of that which New Hampshire had actually granted.¹³⁴ Sir William Tryon's disregard of the King's wishes by an improper exercise of the power of granting lands and his defense of the practice of using fictitious names to circumvent statutory limitations on the size of grants finally provoked his recall to England.¹³⁵ Nothing daunted, Tryon announced this in such a way

133 April 11, 1767, *Doc. Rel. to Col. N. Y.*, VII, 917. The settlers and the Society for the Propagation of the Gospel were exerting powerful pressure in England against New York claims. *Doc. Hist. of N. Y.*, IV, 1027. For Moore's answer to Shelburne, June 9 and 10, 1767, *ibid.*, IV, 590-605; also 608-611.

134 Hillsborough denied this construction by writing to Colden on December 9, 1769, that the King's Order forbade "any grants to be made of lands annexed to New York by His Majesty's determination of the boundary line." *Doc. Rel. to Col. N. Y.*, VIII, 193. Significantly, Governor Moore said he had taken the order "in a greater latitude" and had guided his actions in accordance with Hillsborough's views. *Ibid.*, VIII, 178. According to M. B. Jones, about three-fourths of the acreage patented by New York after the King's Order of July 24, 1767, was made by a proper construction of the Order since the land was located in territory previously unpatented by New Hampshire or patented by New York in confirmation of Wentworth grants. However, the remaining grants, mostly by Dunmore, admittedly did violate the Order, as did, technically, the confirmatory patents issued by New York. *Vermont in the Making*, p. 278. Cf. Hall, H., *Hist. of Vt.*, p. 109; Benton, *op. cit.*, pp. 88-89, to *contra*.

135 For relevant part of instructions to Tryon, *Doc. Rel. to Col. N. Y.*, VIII, 331; cf. Labaree, *op. cit.*, II, 607, sec. 871. Hillsborough to Tryon, Dec. 4, 1771: the use of fictitious names "is an abuse of so gross and fraudulent a nature as deserves the severest Reprehension..." *Doc. Rel. to Col. N. Y.*, VIII, 284-6. Dartmouth to Tryon, Dec. 9, 1772: "I was exceedingly surprised to find that such an intimation to you had not had the effect to restrain that practice, & that the same unjustifiable collusion had been adopted in a still greater extent in the Licenses you have granted to purchase Lands of the Indians." *Ibid.*, p. 339. Cf. *ibid.*, pp. 293-6, 330-7, 356-7, 392. Of course, the Crown did not hesitate to make its own extravagant grants as was seen in

as not to suggest he had fallen under the King's displeasure.¹³⁶ Colden, whom he had left in charge, continued to make prohibited grants in the region.¹³⁷ Then, after being duly admonished, Tryon returned only to defy the warnings again.¹³⁸

Thus in the decade before the Revolution the Green Mountain region swirled with rival claimants who made title either through New York or through New Hampshire. Little wonder that Yankee land speculators, fishing in troubled waters, could lure with more attractive bait settlers who preferred to join them against the New York land speculators whose titles the occupants had convinced themselves were inequitable if not illegal. Indeed, throughout the eastern Hudson Valley the small farmers on Rensselaerswyck, Livingston and Van Cortlandt Manors, and Philipse's Highland Patent could find much ground for resentment against their landlords. For these vast estates, sold for songs, stood in striking contrast to the meagreness of their own holdings. Furthermore, despite the efforts of colonial and royal officials, these huge domains shared the taint of fraud, of illegal defiance of limit-

the Royal Grant to Johnson. Watts, after hearing George Croghan tell how he obtained 30,000 acres said, "Our Governors were Condemn'd for swallowing Gnats, they themselves (the home government) swallow Camels." *Letter Book of John Watts*, p. 318.

136 Tryon spoke of "much confusion and disorder" in the New Hampshire Grants. *Journal of the Votes and Proceedings of the General Assembly of the Colony of New York*, Jan. 12, 1774, p. 5 (J. Buel's reprint, 1820, as are all similar references from 1766 to 1776 unless otherwise indicated). Cf. Hall, H., *op. cit.*, pp. 107-8.

137 Lieutenant-Governor Colden from April 7, 1774, to June 25, 1775, granted 370,000 acres in this region. *Ibid.*, p. 109.

138 Dartmouth to Tryon, May 4, 1771, *Doc. Rel. to Col. N. Y.*, VIII, 573. Even before he left for England, he had been ordered by the King, in instructions dated Feb. 3, 1774, to take periodic surveys, to limit the size of grants to 1,000 acres, to have full publicity, and have fees paid in a fixed manner. Meanwhile no further grants were to be made. *Colden Papers*, VII, 206-210. Other restrictions applying to the New Hampshire controversy and Indian grants were noted by the Council in April, 1774. *Ibid.*, pp. 222-5. Tryon granted 63,040 acres more, exclusive of military patents. Hall, H., "N. Y. Land Grants in Vt.," *loc. cit.*, pp. 152-3.

ing or prohibiting statutes, and of vague metes and bounds, all of which partly characterized the whole system of colonial grants. On these estates, also, Yankee speculators and Indians found willing adherents when they challenged landlord pretensions. Over the Wappinger and Stockbridge claims there hovered the benign, if vague, figure of Sir William Johnson. Busily engaged in feathering his own nest west of the Hudson with what he had saved from fraudulent speculators, he was frequently invoked by the Indians and their tenant-settlers east of the Hudson. Apparently the ethics involved in New York colonial land grants as a whole left much to be desired. What of the legal incidents? How did these affect the small farmer?

CHAPTER II

LAND LAW AND THE LANDED CLASSES

INEQUITABLE and fraudulent land grants exacerbated the deep wounds caused by the legal incidents of a pernicious land system. Under such a system, the farmers in most of the Hudson Valley counties were kept in a state of economic and political dependence. To understand why the estates of Van Rensselaer, Livingston, Philipse, and Van Cortlandt became the focal points of "riotous" farmers before the Revolution, it is necessary to examine the legal aspects of the patroonships, manors, and patents. What legal incidents of these grants, insofar as they affected landlord and tenant relations, had by this time become a source of social discontent? What aspects of real property law in colonial New York added to the leaven of social unrest? To answer these questions it will be necessary to trace aspects of the land system which only apparently, though not in fact, seem unrelated to the limited scope of the problems raised.

When the English grants erected the New York manors after the conquest of New Netherland, a prototype existed in the patroonship of Rensselaerswyck.¹ This not very characteristic offspring of the Dutch land system² had survived several weaker brethren until, by 1685, it was set up as a New York manor.³ By the "Freedoms and Exemptions" of 1629, a

1 Rife, C. W., "Land Tenure in New Netherland," in *Essays in Colonial History Presented to Charles McLean Andrews by His Students*, p. 64. Of course there were English precedents for New York manors in the charters of Maryland, Maine, and the Carolinas. Poore, B. P., *The Federal and State Constitutions, Colonial Charters and other Organic Laws of the United States*, I, 776, 777, 780; II, 1383, 1384.

2 Rife, *loc. cit.*, p. 64.

3 The other patroonships were either abandoned, transferred to the company, or continued as ordinary estates of land. See O'Callaghan, E. B., *History of New Netherland*, I, 121-128, 199, 238-39, 257-58, 365, 382-83; II, 426, 551; Andrews, C. M., *Colonial Period of American History*, III, 83-84, n. 5; Sherwood, W. G., "The Patroons of New Netherland," *Proceedings of the New York State Historical Association*, XII (1931), 270-294.

domain had been granted to Kiliaen van Rensselaer "in perpetual ownership" to be held of the Dutch West India Company as an inheritable fief or feud which could not be disposed of by will or testament.⁴ But on February 5, 1641, Van Rensselaer had been empowered "to dispose by last Will, according to his pleasure, of the aforesaid manor of feudal estate."⁵ Even if the domain became in effect an ordinary allodial holding by virtue of this change,⁶ certainly the patent of November 4, 1685, conferred the usual powers of colonial lords of manors upon the descendants of a Dutch patroon.⁷

Whether the New York manors were validly endowed with powers which were feudal in nature is a question still debated by historians and jurists. The grant of Charles II to the Duke of York was "To bee holden of us our heires and Successors as of our Manor of East Greenwich in our County of Kent in free and Common Soccage."⁸ This non-military type of tenure,

4 Nissenson, *The Patroon's Domain*, pp. 329-330; Rife, *loc. cit.*, p. 66; Fowler, R. L., *Facsimile of the Laws and Acts of the General Assembly for their Majesties Province of New York . . . by William Bradford . . . 1694*, pp. xxxii, xxxv; and his *History of the Law of Real Property in New York*, p. 8.

5 *Doc. Rel. to Col. N. Y.*, I, 124 also 125.

6 S. G. Nissenson concludes that therefore "the domain became in effect an ordinary allodial holding . . ." According to him, one meaningless symbol remained in the requirement that the grantee do homage and seek investiture within one year and six weeks under pain of fine. But he does not believe that this affected the real character of the holding. *Patroon's Domain*, pp. 331-32. E. W. Spaulding considers the patroonships manors, since the patroons had all hunting, fishing, and milling rights and unlimited jurisdiction over criminal affairs. He unfortunately cites no authority. *New York in the Critical Period, 1783-1789*, p. 46. The rights granted to the patroons in 1640 did not affect the status of the cultivator. *Doc. Rel. to Col. N. Y.*, I, 119-123.

7 For a copy of the patent of the manor, Patent Books, V, 228. These included the right to establish a leet court and court baron and the right of distraint upon non-payment of rent. The articles of capitulation guaranteed property rights as did the Duke's Laws, though all were required to have grants confirmed. *Colonial Laws of New York*, I, 57, 107.

8 *Colonial Laws of N. Y.*, I, 2. For example, the charter of 1693 for the manor of Philipsborough contains these words. Hall, E. H., "The Manor of Philipsborough," *Publications of the Order of Colonial Lords of Manor*

the least encumbered with obsolete incidents, was deemed to be not "in Capite or by Knight Service" (which were held directly of the crown and military in character), and was applied to all the land of New York in 1691.⁹ Several British statutes, *Quia Emptores* and the Statute of 1660, striking at subinfeudation and feudal tenures in England, have been cited as a basis for distinguishing between a non-feudal "freehold manor"¹⁰ and a feudal one.¹¹ A more recent authority,¹² basing his analysis on the patents and charters, the system of land tenure, and the relationship of mother country to colony, has concluded that the legal and political aspects of New York manors were feudal.

According to this view, New York was a conquered province over which the crown could exercise unlimited and exclusive

in America, no. 17 (1920), pp. 8-9. The East Greenwich clause, according to Miss V. F. Barnes, did not appear in seignorial patents. "Land Tenure in English Colonial Charters of the 17th Century," *Essays in Col. Hist. to C. M. Andrews*, p. 27.

9 May 13, 1691, *Colonial Laws of N. Y.*, I, 247; *Bradford's Laws of New York* (ed., 1710), p. 4. See also Rife, *loc. cit.*, pp. 72-3. Miss V. F. Barnes distinguishes between knight service and free and common socage as follows: "It can be seen by comparison that much the easiest tenure was to hold of the king as of one of his manors, if free and common socage not in chief (*i. e. in capite*). The tenant had to swear fealty and pay the aids and relief, but was free from homage, primer seisin, wardship, marriage, ouster le main, and fine on alienation." Barnes, *loc. cit.*, p. 7.

10 Statute of Westminster III, 18 Edw. I., c. 1 (1290), *Quia Emptores*; Statute of 1660, 12 Car. II, c. 24, which converted feudal tenures into those of free and common socage. See also Barnes, *loc. cit.*, pp. 34-35; DeLancey, E. F., "Origin and History of Manors" in Scharf, J. T., *History of Westchester County, New York*, I, 79, 85.

11 Fowler, *Hist. of Law of Real Prop. in N. Y.*, pp. 30-31. He states that the grants of manors in New York "conferred on the grantee a seignory only in name, but one devisable and descendible. They were, therefore, franchises of incorporeal hereditaments of a very empty nature." *Ibid.*, p. 32.

12 Goebel, "Some Legal and Political Aspects of the Manors of New York," *loc. cit.*, pp. 3-22. Professor Goebel thinks "it is entirely immaterial for the understanding of the American manors to know how the English manor came about and how it developed." It is important to understand merely what men thought of it in the seventeenth century. *Ibid.*, p. 7. Cf. Osgood, H. L., *American Colonies in the Seventeenth Century*, III, 15; II, 5 *et seq.*

discretion.¹³ Crown lawyers viewed the settlements to be fashioned on the model of the County Palatine of Durham.¹⁴ The counts of this quasi-independent bulwark against Scots had nearly all the powers of the crown except that of legislation. Furthermore, the Duke of York was given substantially regal powers exceeding those of the Lords Palatine and even of the King in England.¹⁵ What could be more natural for him than to use these powers in such a way as to assure himself of the loyalty of his grantees against the triple menace of Dutch reprisals, Indian raids, and New England republicanism?¹⁶

13 The relevant portion of the rule in *Calvin's Case* stated that in conquered countries where the inhabitants were Christians, their laws were in force until the king changed them. Thus they were under royal prerogative and not subject to parliamentary control. 7 Coke's Reports 17; *Blankard v. Galdy*, 2 Salkeld's Reports 411; *Hall v. Campbell*, 1 Cowper 204, 211; Chalmers, G., *Opinions of Eminent Lawyers*, I, 194-225; II, 385-6, 389, 396, 410-15, 422-23, 469-70; *Journal of the Votes and Proceedings of the General Assembly of the Colony of New York*, March 8, 1773, p. 92. This view has been followed by Sioussat, St. G. L., "The Extension of English Statutes to the Plantations," in *Select Essays in Anglo-American Legal History*, I, 417-422; Goebel, *loc. cit.*, pp. 5, 9-11; Brodhead, J. R., *History of the State of New York*, II, 206-210, 249-264. Some later authorities hold that New York was not considered a "conquered" province in theory but a "discovered" one. *Bogardus v. Trinity Church*, 4 Paige 178, 198; *The Canal Appraisers of New York v. People*, ex rel George Tibbits, 5 Wend 423, 445-46; but 460-61 to *contra*; 17 Wend 573, 583-84; but 617 to *contra*; *Morgan et al. v. King et al.*, 30 Barb. 9, 14, though reversed in 35 N. Y. 454. This view has been followed by Story, Joseph, *Commentaries on the Constitution of the United States*, Vol. I, secs. 11, 111-114, 147, 151, 152, 154, 155; Pirsson, J. W., *The Dutch Grants, Harlem Patents, and Tidal Creek*, pp. 2-8; Morris, R. B., *Studies in the History of American Law*, pp. 83-84; Fowler, R. L., "Organization of the Supreme Court of Judicature of the Province of New York," *Albany Law Journal*, XIX (1879), 87-88, 106-109, although this last tries to take a *via media*.

14 Goebel says that the view held in the seventeenth century was that the County Palatine of Durham was founded as a quasi-independent military bulwark. *Loc. cit.*, p. 5. Cf. Coke, E., *Fourth Part of the Institutes of the Laws of England* (London, 1648), chap. 38; Selden, J., *Titles of Honor* (London, 1672), pp. 529-533. Cf. *contra* Lapsley, G. T., *The County Palatine of Durham a Study in Constitutional History* (N. Y., 1900), pp. 12 *et seq.*

15 *Colonial Laws of New York*, I, 1 *et seq.*; Andrews, *op. cit.*, III, 97; Goebel, *loc. cit.*, p. 6.

16 Goebel notes that Governor Nicolls wanted to make grants for this

Both the seventeenth century view of the manor¹⁷ and the earlier English experience with it suggested that through the manorial courts it could function as a unit of government by landlords to serve these purposes in the colonies.

Neither *Quia Emptores* nor the Statute of 1660 could block the extension of the manor to New York in absence of the intention of James, Duke of York, to apply these anti-feudal statutes there.¹⁸ That the Duke had no such intention is apparent

reason. *Loc. cit.*, pp. 6-7. Cf. *Doc. Rel. to Col. N. Y.*, III, 104, 114, 136; Osgood, *op. cit.*, III, 171 *et seq.* Tryon favored grants to men of weight as a counterpoise to "the general levelling spirit." *Doc. Rel. to Col. N. Y.*, VIII, 293-4. See also Andrews, C. M., *op. cit.*, III, 121.

17 A contemporary view of the manor in John Cowell, *The Interpreter* (London, 1684), *sub verb* "manor," p. Vv, ran that it "is a nobler sort of Fee granted partly to Tenants for certain Services to be performed and partly reserved to the use of his (the Lord's) Family, with Jurisdiction over his Tenants for their farms. The whole Fee was termed a Lordship of old, a Barony; from whence the Court, that is always Appendant to the Manor, is called *The Court Baron*." Norden, John, *The Surveiors Dialogue* (London, 1618), First booke, p. 27 to the same effect. Cf. Goebel, J., *loc. cit.*, pp. 8-9.

18 *Ibid.*, pp. 9-11. *Vide supra*, n. 13. Here Goebel disagrees with later court and legal opinion that held that *Quia Emptores* (the Statute of Westminster III, Edward I, c. 1, 1290) precluded all attempts to establish manors as did *Van Rensselaer v. Hays*, 19 N. Y. 68; *People v. Van Rensselaer*, 9 N. Y. 291; Fowler, *Hist. of the Law of Real Prop. in N. Y.*, pp. 29 *et seq.* For discussion of aspects of this point, see Coke, E., *Complete Copyholder* (London, 1668), sec. 31 and *In re Holliday* (1922), Law Rep., 2 Chancery Div. 698; Bingham, A. and Colvin, A. J., *A Treatise on Rents, Real and Personal Covenants and Conditions*, chaps. I and III. Miss V. F. Barnes specifically excepts New York from all colonies where lords could grant manors in spite of *Quia Emptores* and where courts baron could be held. Yet the Duke admittedly had more political power than any other grantee. Barnes, *loc. cit.*, pp. 37-40. The point has been made that New York was "conquered from the Dutch and not from the Indians." *Clarendon Papers* in New York Historical Society, *Collections*, 1869, II, 3; "The Colden Letters" on Smith's *History*, *ibid.*, 1868, I, 182-86; Story, *op. cit.*, I, sec. 152.

Goebel also holds that the Statute of 1660 (12 Car. II, c. 24), could not apply to New York under the rule in Calvin's Case. Cf. 2 Peere Williams 75; *McCullogh v. Murphy* in Ms Minutes of the Mayor's Court of New York City, 1729-1734 (Hall of Records, N. Y. C.). A contrary view is expressed in De Lancey's chapter in Scharf, *Hist. of Westchester*, I, 35-36, 79, 86, 87-90; and the two New York cases and Fowler's *Real Property in N. Y.*, cited above in this note.

from the fact that three strategically ¹⁹ situated smaller manors were created within a few years of the grant to the Duke of York: Pell Manor in Westchester, Sylvester on Shelter Island, and Winthrop on Fishers Island.²⁰ The defensive purpose of these and of other manors was reflected in their military burdens which were the same as those placed upon towns.²¹ The confirmation of Rensselaerswyck as a manor, and the creation of other lesser and greater manors soon followed when Dongan, Fletcher, and others pursued the trail blazed by Nicolls.²²

The feudal character of manorial grants is apparent in the local jurisdictions they intended to establish.²³ Yet, more important than the label "feudal," or "quasi-feudal," or "feudal system without villeins,"²⁴ is an understanding of the manner in which these grants gave great economic and political power

19 Brodhead, *Hist. of N. Y.*, II, 107-8; *Clarendon Papers*, loc. cit., II, 12; Schuyler, M., "The Patroons and Lords of Manors of the Hudson," *Publications*, Order of Col. Lords, no. 23 (1932), map *post* p. 32; Goebel, loc. cit., pp. 11-12.

20 In 1666 and 1668, Pell, H., "The Pell Manor," Order of Col. Lords, *Publications*, no. 5 (1917), p. 6; Woolsey, M. L., "The Winthrop Manor of Fishers Island," *ibid.*, no. 14 (1927), pp. 24-25; Scharf, *History of Westchester County*, I, 156; Mallmann, J. E., *Historical Papers on Shelter Island and Its Presbyterian Church*, pp. 27-28.

21 Sylvester manor bought an exemption; Livingston maintained a military company. *Colonial Laws of New York*, I, 49-55; *Doc. Hist. of New York*, III, 704; Goebel, loc. cit., p. 15; Mallmann, *op. cit.*, p. 27.

22 Rensselaerswyck was confirmed as a manor to Kiliaen Van Rensselaer, 2nd, by Cornbury on May 26, 1704. The *Publications* of the Order of Colonial Lords of Manors in America, nos. 1-27 (Baltimore, 1914-1936), contain short articles on all of the manors. While many of these are gossipy, nearly all contain reprints of the original grants. Those by J. Goebel and M. Schuyler (nos. 18 and 23) are especially useful. The manors in which we are especially interested, in addition to Rensselaerswyck, are: Livingston, to Robert Livingston, July 22, 1686, granted by Dongan; Philipsborough, to Frederick Philipse, June 12, 1693, by Fletcher; and Cortlandt, to Stephanus Van Cortlandt, June 17, 1697, by Fletcher.

23 R. L. Fowler holds that manors were "intended to continue to be the nuclei of colonization, and to afford a ready-made local government of the colonists in distant and almost inaccessible regions of the new country." *Facsimile of the Bradford Laws of New York*, p. xcvi.

24 Spaulding, *op. cit.*, p. 60.

to the grantees. For the extent to which such power was exercised almost exclusively by the landlord aristocracy is itself a measure of the drive towards agrarian rebellion when the victims of abuses sought their remedies beyond the pale of the law. Power was vested in the hands of the landlords in two respects: in their relation to the county, the colony, and the crown; and to their tenants. The "privileges and immunities" conferred were suggestive of the political decentralization that characterized a medieval manor. A landed aristocracy was nurtured by the engrossment of estates which proved a firm bulwark against "republican" and "leveler" tendencies.²⁵ Even the Dutch grant of 1629 to Van Rensselaer had given him (besides ownership of the soil, the right of escheat, and hunting, fishing and milling rights) unlimited criminal jurisdiction over the lives of inhabitants and the right of appointment of magistrates and clergymen.²⁶ The one court which Van Rensselaer was authorized to have, in 1665 merged with that of Fort Orange. However, the patent of 1685 provided for "one Courte Leete and one court baron."²⁷ Thus the basis for a system of local courts under the landlord's control, which supplemented the courts of the colonial authorities, was established.

All the New York patents creating manors, except the Lloyd grant, which called for "One Court leete" only,²⁸ authorized

²⁵ Goebel, *loc. cit.*, p. 17. Cf. "Van Cortlandt Manor" in Order of Col. Lords, *Publications*, no. 6 (1920); Wheeler, C. B., "Heathcote Manor of Scarsdale," *ibid.*, no. 11 (1923); Hall, E. H., "Manor of Philipsborough," *ibid.*, no. 7 (1920); Akerly, L. D., "The Morris Manor," *ibid.*, no. 4 (1916); *Doc. Rel. to Col. N. Y.*, III, 350-356.

²⁶ Van Laer, A. J. F., *Van Rensselaer Bowier Mss, Being the Letters of Kiliaen van Rensselaer, 1630-43, and Other Documents Relating to the Colony of Rensselaerswyck*, pp. 136-153.

²⁷ Van Laer, A. J. F., *Minutes of the Court of Fort Orange and Beverwyck*, I, 9; *Colonial Records, General Entries, 1664-1665*, p. 119; Nissenson, *op. cit.*, pp. 383-84.

²⁸ Woolsey, M. L., "The Lloyd Manor of Queens Village," *Publications*, Order of Col. Lords, no. 13 (1925), pp. 10-11. For trial of causes not to exceed £5, Lloyd's leet court could award and issue customary writs of distraint. *Ibid.*, p. 36.

the establishment of leet courts and courts baron.²⁹ However slight was the distinction between these two courts, in actual operation, on many seventeenth century English manors,³⁰ each court had a distinct function. The court baron handled questions arising from tenancy and small civil litigation of tenants; the leet court was an ordinance-making body and a police court where offenders against the local regulations were presented.³¹ Since there is extant only one record of a notice of appeal (from the manor court of Fordham),³² no conclusion can be sufficiently sustained in regard to the exercise of the power to create manorial courts save that they were not thriving institutions. It is probable that the courts baron existed prior to 1691 though not after, and that the leet court franchises were not exercised at all.³³

29 Goebel, *loc. cit.*, p. 18. M. L. Woolsey believes that Shelter Island and Fordham were empowered to create both courts in the clause "like and equal privileges and immunities with any manor within this government." Woolsey, *loc. cit.*, pp. 11-12.

30 Webb, S. and B., *English Local Government from the Revolution to the Municipal Corporation Act* (4 vols., London, 1906-1922), II (*Manor and the Borough*), 64 *et seq.*; Goebel, *op. cit.*, p. 18.

31 Webb, S. and B., *op. cit.*, Vol. II, *passim*; Hearnshaw, F. J. C., *Leet Jurisdiction in England*... (Southampton, 1908); Ritson, J., *The Jurisdiction of the Court Leet* (London, 1809); Kitchin, J., *Jurisdictions* (London, 1656); Maitland, F. W., ed., *Select Pleas in Manorial and Other Seigniorial Courts* (London, 1889), Vol. I, introduction; Sheppard, W., *The Court-keepers Guide* (London, 1649); Wilkinson, J., *A Treatise Collected Out of the Statutes of This Commonwealth* (London, 1657), pp. 161-248; Pollock, F. and Maitland, F. W., *History of English Law before the Time of Edward I* (2d ed.; 2 vols., Cambridge, 1923), I, 594 *et seq.*; Andrews, *The Colonial Period of American History*, II, 206, 216, 218; also pp. 201-210, 214-218, for general background in England.

32 Dated February, 1676, N. Y. Colonial Mss, XXV, 79; *Cal. of Hist. Mss*, II, 44.

33 Goebel admits the possibility of manor courts functioning but is wary of conclusions in the face of lack of evidence. He indicates that the courts baron were not of record, hence would leave none; that only hearsay evidence for manorial courts actually functioning exists [*e. g.* Street, C. R., ed., *Huntington Town Records*, I, 423-424; Fox, D. R., *Caleb Heathcote*, pp. 120-1; Hall, E. H., *Philipse Manor Hall at Yonkers, New York*, p. 114; Carmer, *The Hudson*, p. 82]; and that some writers believe courts were held only in

Three considerations explain the early demise of the manor courts. First, New England influence brought the town courts, at least to Long Island.³⁴ Governor Nicolls permitted such courts because some inhabitants looked upon the justice of the peace as "an Abomination."³⁵ Thus, before 1691, when the town courts were superseded,³⁶ there was a tendency of local town or county jurisdiction to absorb the manor business; after, for the justice of the peace to do so.³⁷ Manorial lords exercising powers for both county and manor found it convenient to act under the governor's commission of peace. In the second place, since copyhold tenure was not adopted, there was no need of a lord's court to keep records. Thirdly, the central colonial government at first controlled ordinances for the locality; later, the town governments did so, making manor courts unnecessary.³⁸ The manorial courts gathered strength too late to withstand the increasing efficiency of town and county administration. If their formal existence bowed to higher forces, their spirit lingered on endowing the lords of manors with the substance of political and economic power expressed through other channels.

Lacking functioning manorial courts by the end of the seventeenth century, manorial lords retained many effective powers

the manor on which they were writing. Goebel, *loc. cit.*, p. 19, n. 59; p. 22, n. 68. Cf. Van Cortlandt, Mrs. Pierre E., "The Van Cortlandt Family" in Scharf, *Hist. of Westchester*, II, 426.

34 MacLear, A. B., *Early New England Towns, a Comparative Study of Their Development*, pp. 44 *et seq.*; *Colonial Laws of N. Y.*, I, 27 *et seq.*; Goebel, *op. cit.*, pp. 19-21.

35 Gov. Nicolls to Clarendon, April 17, 1666, *Clarendon Papers, loc. cit.*, II, 119.

36 Fowler, *Facsimile of the Bradford Laws of N. Y.*, pp. 2-6; *Colonial Laws of N. Y.*, I, 43-44.

37 *Colonial Laws of N. Y.*, I, 226 *et seq.*

38 Goebel says that the dual character of the manor as township and manor left the form of the court optional whether town court or court baron, and at the same time supplied an administrative head, the lord of the manor, who like a justice of peace was responsible to the governor. Goebel, *loc. cit.*, p. 21 and 19, n. 59; cf. DeLancey, E. F., in Scharf, *Hist. of Westchester*, I, 97.

in relation to the county and colony. Although the authority of the governor and legislature, and of the sheriff and county, extended to the manor in matters above manorial jurisdiction, the manor lord's consent seems to have been required to permit the entrance of justices of peace and of constables.³⁹ In 1684 Francis Romboult (Rombouts), a former Mayor of New York City, had to petition the governor to get John Pell to pay a debt because the patent to Pell had freed him from all but the governor's jurisdiction.⁴⁰ Three of the great manors, Rensselaerswyck, Livingston, and Cortlandt, were authorized to have their own representatives in the colonial assembly.⁴¹ These representatives, as shall be shown, were generally kinsmen or henchmen of the manorial lords whom the voting inhabitants saw fit to elect. Frederick Philipse's charter to Philipsborough, authorizing the erection of King's Bridge over Spuyten Duyvil, conferred the unique right of collecting tolls.⁴² These privileges and immunities together with "the Advowson and right of Patronage" of churches⁴³ vested in the lords of manors power over the affairs of men.

In addition to these vast powers and domains, the reservation of a quit-rent to the crown suggests the feudal nature of these

39 Spaulding, *N. Y. in the Critical Period*, pp. 58-59. Spaulding cites Van Schaack, *Memoirs of Henry Van Schaack*, c. p. 151 and Van Rensselaer Leases (N. Y. State Lib.) neither of which references has led to the discovery of relevant material. This political immunity does not seem to have obtained in Rensselaerswyck by the middle of the seventeenth century where written "summons" to settle the boundaries in 1654 were ordered served on the dominal authority. *Doc. Rel. to Col. N. Y.*, XIV, 256; cf. Nissenson, *Patroon's Domain*, pp. 239-41, 275.

40 *Cal. of Hist. Mss.*, II, 112. A copy of Pell's Charter is in Scharf, *Hist. of Westchester*, I, 103-4.

41 Since 1685, 1715, and 1717 respectively, Spaulding, *op. cit.*, pp. 58-59; Livingston, *The Livingstons of Livingston Manor*, p. 111; DeLancey, "Origin and Hist. of Manors," *loc. cit.*, I, 124.

42 Copy of charter in Scharf, *Hist. of Westchester*, I, 160e.

43 From the patent of Rensselaerswyck, Nov. 4, 1685, printed in Nissenson, *op. cit.*, pp. 383-4; see Spaulding, *op. cit.*, pp. 58-59.

grants.⁴⁴ Indeed, when the meagreness of the quit-rents is contrasted with the hugeness of the grants, the system of relationships to the crown appears as one more of privilege than of obligation. For, the lords of manors, no less than great patentees, paid extremely low quit-rents. Thus, Van Cortlandt's 86,000 acres called for 40 shillings per annum; Philipse's 156,000 acres, £4, 12 shillings; Livingston's 150,000 acres, 28 shillings; Rensselaerswyck's 1,000,000 acres, 50 bushels of wheat; Scarsdale, £5; Pelham, 20 shillings; Morrisania, 6 shillings; Fordham, 20 bushels of peas; Lloyd's Neck, 4 bushels of wheat. Nor were these token payments always made.⁴⁵ The disparity between the consideration paid and the value received led to the charge of fraud.⁴⁶ What, then, would the man who ran a plow over these very lands think of the exactions the Livingstons, the Philipses, the Van Cortlandts, and the Van Rensselaers made upon him?

Notwithstanding the fact that the lands in some cases were almost wholly untilled,⁴⁷ the size of the quit-rents and the laxity in their payment provoked the hostile comments and actions of colonial officials.⁴⁸ Governor Dongan tried to impose omitted quit-rent clauses by buying abutting Indian lands in order to force recalcitrant patentees to have their grants confirmed with a reservation of quit-rent included.⁴⁹ After Bello-mont, with a few exceptions, a quit-rent of two shillings, six pence was required for every hundred acres until 1774, when it was reduced to a half-penny. Officials like Colden had frequently charged that the quit-rents were too small.⁵⁰ Archibald

44 Goebel, *loc. cit.*, p. 16. See *Colonial Laws of N. Y.*, I, 44, 80-81, and Bond, B. W., *Quit-Rent System in the American Colonies*, p. 25.

45 See above; also DeLancey, "Origin and History of Manors," *loc. cit.*, I, 96; Spaulding, *N. Y. in Critical Period*, pp. 65-66; Bond, *op. cit.*, p. 111.

46 *Doc. Rel. to Col. N. Y.*, III, 493 *et seq.*

47 Goebel for this reason believes Livingston's quit-rent "is not so grossly inadequate." Goebel, *loc. cit.*, p. 17.

48 Rife, *loc. cit.*, p. 62.

49 *Doc. Rel. to Col. N. Y.*, III, 401.

50 *Doc. Hist. of N. Y.*, I, 375-389. See also *Doc. Rel. to Col. N. Y.*, IV, 271,

Kennedy, the first Receiver-General who really tried to collect quit-rents in New York, met the stubborn opposition of the Assembly. In 1761 he managed to collect £800, though both Moore and Gage agreed in 1767 that the total should have been £1,800 per annum with £19,000 in arrears.⁵¹ It was a tribute to the power of the landholders in the colonial legislature that efforts before the Revolution to change this feeble quit-rent system were of no avail.⁵² Nor did the reservation of mine rights prove any more beneficial to the crown than that of the quit-rents.⁵³

The power of the great landlords in their grants from the crown, whether manorial or non-manorial, must be contrasted with the dependence of the small farmers in their grants or leases from these landlords. Only then can the violent outbreaks upon the estates of the Livingstons, the Philipses, the Van Cortlandts, and the Van Rensselaers be adequately understood. For even where the grant was in the form of a patent without the incidents of manorial tenure, it gave vast economic power to the grantee. In either case, he owned a freehold estate, an estate of inheritance, usually of huge dimensions, for which he was obliged to pay only a small quit-rent. By the middle of the eighteenth century the existence of printed forms of conveyances, in a period when printing was not common, suggests that he was free to grant or lease this property under his own terms. In any case, the dependence of the small farmer was general throughout the large manors and patents of most of the

327, 384, 391-92; V, 162, 368; *N. Y. Colonial Mss*, XXXV, 39; *Cal. of Hist. Mss*, II, 135, 163; *Colden Letter Books*, I, 362-364; Bond, *op. cit.*, pp. 261-264.

51 Alexander, in Flick, *op. cit.*, III, 155.

52 Spaulding, *N. Y. in the Critical Period*, p. 58; Bond, *The Quit-Rent System in the American Colonies*, pp. 404 *et seq.*

53 On June 7, 1763, Frederick Philipse in a memorial stated that mines had been discovered and that, since others were claiming them, he asserted his prior claim and asked the Crown for all royal mines already discovered and which shall be discovered. Chalmers Collection of Mss (N. Y. P. L.), II, 75. For the elaborate but futile machinery set up by the Legislature in 1742, 1755, 1762, and 1769 to collect quit-rents, see *Colonial Laws of N. Y.*, III, 209-215, 1107-1114; IV, 584-591, 1036-1038; V, 669-670.

Hudson Valley counties. Not without reason did Bellomont speak of the "vassallage" in New York province and Colden think that the New York peasantry was "in no manner superior to the common farmers in England."⁵⁴

In general the landed proprietors favored a tenant-farmer system similar to that in England. To that end they advertised holdings for rent rather than for sale.⁵⁵ This policy and the terms of the grants or leases of the great landlords appear inspired by the same sentiments that Governor Tryon expressed in defence of large grants to men of weight. "They will naturally farm out their lands to Tenants; a method which will ever create subordination and counterpoise, in some measure, the general levelling spirit. . ." ⁵⁶ The terms under which the New York peasants of the manors and patents held their lands varied widely even when title was derived from the same landlord, and especially when from different landlords.

The forms of eighteenth century New York conveyances were naturally somewhat different from modern ones.⁵⁷ Yet, the distinctions that Coke and Blackstone made between freehold estates of inheritance or for life, and leasehold estates for a certain period of time or during the pleasure of the parties,

⁵⁴ Bellomont to Lords of Trade, Jan. 2, 1701: "Mr. Livingston has on his great grant of 16 miles long and 24 broad, but 4 or 5 cottagers as I am told, men that live in vassallage under him, and work for him, and are too poor to be farmers having not wherewithall to buy Cattle to stock a farm. Old Frederick Phillips is said to have about 20 families of those poor people that work for him on his grant." *Doc. Hist. of N. Y.*, III, 629. Cf. *Doc. Rel. to Col. N. Y.*, IV, 822-23; VII, 795 *et seq.*

⁵⁵ Harrington, *The New York Merchant*, p. 135.

⁵⁶ Tryon to Hillsborough, April 11, 1772, *Doc. Rel. to Col. N. Y.*, VIII, 293-294.

⁵⁷ Spaulding has a brief schematic representation of the different types of estates which is clear for the layman. *N. Y. in Critical Period*, pp. 60-61. But the student had best consult Coke, E., *The First Part of the Institutes of the Laws of England or, a Commentarie upon Littleton* (8 ed.; London, 1670), Lib. I, chap. 1, secs. 1-13, chap. 2, secs. 13-32, chap. 6, secs. 56-57, chap. 7, secs. 58-67, chap. 8; Blackstone, W., *Commentaries on the Laws of England*, Vol. II, chaps. VII-IX; *Bouvier's Law Dictionary*.

were basic.⁵⁸ Documents were sometimes labelled leases which today would be called deeds granting freehold estates of inheritance. For example, in a document labelled "lease" Hendrick Van Rensselaer "hath Granted Bargained and Sold, Assigned and Sett over" to Hendrick Ten Brook (Broeck) land of which the extent of ownership was defined in the *habendum* clause as follows: "To have and to Hold the said piece and parcell of land and Every part thereof with its appurtenances unto the said Hendrick Van Rensselaer his heirs Executors administrators and assigns for Ever. . ." ⁵⁹ Another form of conveyance was the lease and release which was a contrivance that had supplanted the ordinary deed of feoffment. The lease conveyed an estate with a reservation which was then "released" to the tenant in possession. In this manner the property, cleared of the lessor's right of reversion, was conveyed to the lessee.⁶⁰

There were other freeholds that were usually fee tails, where an estate was conveyed to a grantee and then to all or specified heirs of his body; or life estates, where the term was usually limited by the span of two or three lives in being.⁶¹ The non-

⁵⁸ Coke's and Blackstone's distinctions are far more ramified and detailed. It has not seemed necessary to deal with all the fine legal subtleties involved.

⁵⁹ October 26, 1769, Van Rensselaer-Fort Land Papers (N. Y. P. L.).

⁶⁰ The Duke of York conveyed New Jersey in this manner. *New Jersey Archives*, I, 8-14. See also Jacob, G., *The Law Dictionary*, s.v. "Lease and Release"; Digby, K. E., *An Introduction to the History of the Law of Real Property*, pp. 366-367; Story, *Commentaries on the Constitution of the United States*, I, sec. 174.

⁶¹ The generalizations used in this description of colonial freeholds and leaseholds are based upon an examination of many colonial manuscripts of land papers. Some of them are: Redmond-Livingston Mss (N. Y. P. L.); William Bayard-Campbell-Pearsall Collection, New York Counties Land Papers, nos. 1-4 (N. Y. P. L.); Gilbert Livingston Papers, Land Papers (N. Y. P. L.); Philipse-Gouverneur Land Titles (Col. U.); Schuyler Papers, Land Papers, nos. 16, 18, 22 (N. Y. P. L.); Tomlinson, Oversize Mss (N. Y. P. L.); Van Rensselaer-Fort Land Papers (N. Y. P. L.); Van Rensselaer Leases (N. Y. State Lib.). There are printed ones in: Van Lear, *The Van Rensselaer Bowier Mss*, esp. pp. 746-780; Pearson, J., *Early Records of the City and County of Albany and the Colony of*

freehold estates were leaseholds for some determinable period, usually of years.⁶²

The terms of eighteenth century conveyances of freehold estates, whether conveyed by manorial lords or great patentees, generally reserved a rent payable annually in kind or in specie. This rent was reserved forever, despite the grant of a fee simple, without destroying the absolute quality of such a fee. For example, Philip Philipse's "lease" to Moss Kent on August 1, 1766 was a conveyance of a "fee farm" of eight acres which reserved an eight pound perpetual rent to Philipse, "his heirs and assigns for ever." In conveyances of this century, milling and mining rights were reserved to the grantor as were quarter or half-sale rights which entitled the grantor to a quarter or half of the sales price when the estate was sold.⁶³ For non-fulfillment of obligation the deed included a right of distraint which permitted the landlord to reenter and retake possession. Some deeds provided for virtual *corvées* and obliged the grantee to pay the royal quit-rents.

Eighteenth century term leases contained similar provisions. Of course, the term was limited by a span of time that ranged

Rensselaerwyck, Vols. I and II. Cf. Paltsits, V. H., *Inventory of the Rensselaerswyck Manuscripts...in the New York Public Library* (N. Y., 1924).

⁶² There seemed to be some doubt whether a lease for twenty-one years or over was a valid lease. H. G. Livingston to Gilbert Livingston, January 1, 1782, Gilbert Livingston Papers, I (N. Y. P. L.). This type of lease may have been considered a fee simple, but contemporaries were not certain of its status. Cf. Spaulding, N. Y. in *the Critical Period*, pp. 60-61.

⁶³ Philip Philipse to Moss Kent, August 1, 1766, Philipse-Gouverneur Land Titles, no. 19. Nissenson rightly observes, "...long before the seventeenth century, the law writers had uniformly declared that a condition restricting alienation, attached to the grant of such a fee, was void, because the idea of absolute dominion and a limited right of alienation were repugnant to each other." Of the colonial period, he writes, "the restraint upon alienation which was contained in the contemporary agreements, whatever might be its legal character and consequences, was, in practice, not uniformly enforced." *Patroon's Domain*, pp. 64-65. A. Bingham and A. J. Colvin stressed the onerous and degrading set of obligations that were attached to the lands as constituting their feudal nature. *Rents, Real and Personal, Covenants, Conditions*, p. 29.

from one year to twenty-one, and possibly more. The provisions for payments in kind were suggestive of a metayage or share-cropping system; the requirements of service, of a *corvée*. The right of distraint in behalf of the landlord forced the tenant's compliance to the contract of lease.

In addition to these obligations the small farmers on the manors had certain obligations which were peculiar to the manor. As indicated above, they had to submit to the jurisdiction of the manor. Their economic dependence helped the lord use his manor as a rotten borough in the election of a manorial representative for the Assembly. The personal services required were more detailed than on the patents, and frequently reservations of rights were more onerous. The lord reserved the right to cut timber and collected fees for making roads. The penalty of forfeiture of the estate was added to distraint in enforcing compliance. Rights of advowson, the patronage of a church living, persisted, though tithes were obsolete as were prohibitions upon fur trade.⁶⁴ For these reasons, where the character and policy of the landlord did not counterbalance all other considerations, the lesser grantee or tenant generally viewed the manor and its lord as more obnoxious than the patented estate and its proprietor.⁶⁵ But in either case, insecurity of tenure hung like a spectre over their farms, blighting any ambitious projects. For what did it help a farmer to improve his farm only to be faced at the end of his term by the alternative of paying more rent or of leaving the farm and its improvements to the landlord?⁶⁶

⁶⁴ We have already seen (above n. 54) Bellomont's characterization of Livingston's tenants as vassals. *Doc. Hist. of N. Y.*, III, 629. Cf. Wilson, R. R., *Rambles in Colonial Byways* (2 vols., Philadelphia, 1901), p. 109; Hall, *Philipse Manor Hall at Yonkers, N. Y.*, pp. 87-88.

⁶⁵ Spaulding, *op. cit.*, pp. 58-59. The importance of manorial tenants is seen from the fact that in 1769 at least five sixths of the inhabitants of Westchester County lived within the bounds of the great manors there. Turner, F. J., "The Old West," *Proceedings of Wisconsin Historical Society*, 1908, p. 196.

⁶⁶ Spaulding, *op. cit.*, pp. 55, 62. Ironically enough even patriot tenants on confiscated estates had to buy back their own improvements after the Revolution or suffer them to be lost to another purchaser. Assembly Papers,

The manor of Rensselaerswyck, despite any good intentions of the patroons⁶⁷ and lords of the manor, furnished an excellent illustration of the degradation of the peasant. Its history of oppression spanned three centuries. How tenaciously the landlords clung to their property throughout this time is demonstrated in Samuel J. Tilden's report in 1846 on the land system. This report revealed that even at that date most of the estates conveyed were freeholds with a reservation of a perpetual rent and of a quarter sale or of half a year's rent upon alienation.⁶⁸ With a few exceptions⁶⁹ the policy of making no sales, begun by Kiliaen van Rensselaer,⁷⁰ the first patroon, in his instructions to his agent, Arent van Curler, was continued by his successors. They introduced toward the end of the century "durable leases" with their perpetual rents, "quarter sales," and "tenth sales." This policy of non-alienation

1777-1831 (N. Y. State Lib.), XXV, 127, 128, 133, 135-136, 140, 142, 152, 155, 158, 185; XXVI, 65, 245; XXVII, 65, 191. The details of the transactions involved may be found in H. B. Yoshpe's *Disposition of Loyalist Estates in the Southern District of the State of New York*, pp. 32-35, 56-57, 114-115.

⁶⁷ Even the first patroon was generously paternal in extending capital to immigrants, laying out bouwerries, erecting farm buildings and mills, equipping them, and bringing in artisans. Rife, *loc. cit.*, p. 68. Nissenson, however, realistically suggests the relationship of interest to paternalism. *Patroon's Domain*, pp. 72, 73, 81, 108, 109.

⁶⁸ Bigelow, John, ed., *The Writings and Speeches of Samuel J. Tilden*, I, 188-194; N. Y. State, *Assembly Documents*, no. 189 (1844), VII, 19-24.

⁶⁹ Nissenson writes that, beginning with the first sale by Jan Baptist van Rensselaer to Johan de Hultcr, there were a few sales which were complete and absolute conveyances of the grantor's entire fee. But he concludes that the general policy seems to have been to discourage sales. *Patroon's Domain*, pp. 49, 52-55. Cf. Pearson, *Early Records of Albany*, I, 113, 117, 118, 149, 175, 267, 271, 371, 373, 498 *et seq.*

⁷⁰ This policy was in nowise changed by Kiliaen's instructions to Arent van Curler on June 16, 1640, in which he wrote that he was "... not averse to selling in course of time a few farms in perpetuity to those who shall be inclined and have means to take them and in this way gradually to form an [independent] community." *Van Rensselaer Bowier Mss.*, p. 494. These instructions were issued to stop the mouths of those complaining against the patroon's demand of tithes. Nissenson, *Patroon's Domain*, p. 48.

tion of land persisted throughout the eighteenth century and became the subject of much agitation and controversy in the nineteenth century.⁷¹

The Rensselaer grants of the eighteenth century were freehold estates whether the words of conveyance were that the grantor "transports in full ownership, for him and his heirs, forever," or the more usual words of "letting and hiring forever." All of them contained a restraint on alienation except on notice to the landlord, and a reservation of a perpetual rent.⁷² This rent varied in amount and nature. It might be in wheat or fowl or both. It might be a specific sum of money. Usually three days service with wagon and horses was required. Furthermore, the lord reserved the rights of distraint, milling and mining privileges, and the right of cutting timber. As on all manors, the grantee had to submit to whatever remained of the jurisdiction of the manor.⁷³

The Rensselaer term leases of the eighteenth century naturally accorded even less security of tenure than the grants of freeholds. The earlier conveyances of the seventeenth century had

⁷¹ Van Rensselaer Leases (N. Y. State Lib.) ; Nissenson, *op. cit.*, pp. 52-5; Spencer, "Land System of Col. N. Y.," *loc. cit.*, p. 151; Anderson, G. B., *Landmarks of Rensselaer County New York*, p. 25. By 1846 there were 1,397 leaseholds, nearly all held under perpetual leases, in Albany County covering 233,900 acres yielding 23,390 bushels in wheat and 1,666 leaseholds in Rensselaer covering 202,210 acres yielding 20,210 bushels of wheat per annum. Quarter sales persisted and arrears in rents piled up to \$500,000 by 1839. Cheyney, E. P., *The Anti-Rent Agitation in the State of New York*, p. 14. Cf. N. Y. State, *Assembly Documents*, no. 189 (1844), VII, 2-3, 19-24.

⁷² For example see Stephen Van Rensselaer to David Babcock, January 11, 1772; to Henry Ball, September 12, 1774; to Hendrick Gardenier, 1768; to Hendrick Gerse, September 10, 1766. Van Rensselaer Leases (N. Y. State Lib.). Cf. Van Laer, A. J. F., ed., *Correspondence of Maria van Rensselaer, 1669-1689*, pp. 28, 29, 181; Bingham and Colvin, *op. cit.*, pp. 26-29.

⁷³ These are listed for manors in general in Spaulding, *op. cit.*, pp. 58-59. A convenient example, though drawn in the middle of the seventeenth century, is the lease to Arent van Curler. It contained the provisions for tithes, payments in kind, work provisions, quit-rents and the like. O'Callaghan, *History of New Netherland*, I, 474-75.

been leases for a term of years, usually of short duration.⁷⁴ They included tithes, and prohibitions against fur trading and against housing strangers without permission.⁷⁵ But by the eighteenth century these terms were obsolete. Most of these later leases were for a thirteen year term, with a reservation of a right of reentry. Furthermore, they generally obligated the tenant to "pay all Taxes and Assessments" as well as the rent.⁷⁶ The oppression of the earlier century produced its small farmer opposition and landlord reprisals in disputes over income, profit, and method of division of standing grain; over accounting and collecting of rents; and over tithes;⁷⁷ but it was not until the eighteenth century that these controversies flared into armed violence.

Of the two remaining manors which were the scenes of farmer agitation, Livingston was quite similar to Rensselaerswyck in its landlord-tenant relations, though Cortlandt was beginning to be different. In Livingston Manor most of the

⁷⁴ Nissenson gives an excellent description of the form of a Rensselaer farm lease about 1654. Its terms included provisions binding the tenant to surrender the premises "wind and water tight," to pay tithes and the *toc-pacht*, or surrent, to deliver one half of the increase of all animals, and to submit to the laws, ordinances, and courts of the domain. *Patroon's Domain*, p. 44.

⁷⁵ The opposition of farmers to tithes appeared to be just as stubborn as Kiliaen van Rensselaer's determination to enforce them. See his instructions to Arent van Curler, Jan Corneliz, Adriaen van der Donck. *Van Rensselaer Bowier Mss*, pp. 493, 494, 505, 632, 633-634. Cf. Nissenson, *op. cit.*, p. 90. The lease to Arent van Curler referred to above ran, "The lessee shall not lodge any strange traders in his house nor bring nor receive their goods, in pain of forfeiting all the conditions granted to him, and to be ejected as a perfidious man." O'Callaghan, *Hist. of New Netherland*, I, 474-75.

⁷⁶ For example, see Catherine Van Rensselaer to Amos, Daniel, and William Andross; to David Archer; to John Van Gelder, all of August 9, 1773; to Nicholas Richter, November 28, 1771; to Nathaniel Rose, October 31, 1771; to Peter Roseberger, August 6, 1773; to Charles Smith, May 20, 1772. *Van Rensselaer Leases* (N. Y. State Lib.).

⁷⁷ See Nissenson, *op. cit.*, pp. 39, 41, 74-75, 67; *Van Rensselaer Bowier Mss*, pp. 478, 491, 493-495, 505, 632-634, 650, 663, 665. For the patroon's efforts to prosecute and use force against recalcitrants, see Nissenson, *op. cit.*, pp. 105, 110, 117, 132, 260.

conveyances were estates for the life of two persons in being, occasionally one or three lives.⁷⁸ A few were granted in absolute ownership as fees simple with reservation of yearly rents; others were leased for a term of years.⁷⁹ Livingston leases in the 1750s and later, like those of Rensselaerswyck and Cortlandt Manor, contained clauses making the tenant responsible for taxes. Thus Robert G. Livingston's printed forms contained the provision that the tenant was to pay the rent set, "which Rent is to be paid without any Deduction or Abatement of or for any Manner of Taxes, Charges, Assessments or Impositions whatsoever, that have been or shall be taxed, charged, assessed or imposed upon the hereby demised Premises."⁸⁰

In Cortlandt Manor, land affairs seemed to be slowly improving for small farmers, at least after 1766. Stephanus Van Cortlandt's will had provided for an equal division of his estate

78 Samuel J. Tilden's report in Bigelow, *op. cit.*, I, 190. These were like the grants of Robert G. Livingston on May 1, 1756 to Gary Lane, *et al.*, for a term of three lives to land in Beekman's patent, with a rent of two couple of live fat hens, one day's work with waggon, sled, or plow and one able man as driver, and 20 bu. of good winter wheat. There were provisions for reentry and distraint on non-payment of rent. The grantee was required to use the grantor's mill and pay a toll fee of one tenth. The grants to Simon Snyder, May 31, 1758, for three lives, to Daniel Bemiss, for three lives, August 14, 1742, and to William Potter, Nov. 18, 1767, for two lives, were similar. Gilbert Livingston Papers (N. Y. P. L.). See indentures in Redmond-Livingston Mss. For an expression of doubt on the legality of leases for three lives, see H. G. Livingston to Gilbert Livingston, January 1, 1782, Gilbert Livingston Papers.

79 Similar to R. G. Livingston's grant to Darius Talman and his heirs, with a yearly rent, and other terms like those in n. 78; and to Joseph Heegman, March 31, 1746 for one year, Gilbert Livingston Papers. See Murray, David, "The Antirent Episode in the State of New York," in *Annual Report of the American Historical Association*, 1896, I, 144.

80 Governor Wright's Message to the Legislature, January 6, 1846, Lincoln, C. Z., ed., *Messages from the Governors, Comprising Executive Communications to the Legislature and Other Papers... 1683 to 1906*, IV, 242-243; cf. R. G. Livingston to Gary Lane, May 1, 1756, and to William Potter, Nov. 18, 1767, Gilbert Livingston Papers; Bingham and Colvin, *op. cit.*, p. 27. For example of clause in Rensselaerswyck, see above and N. Y. State, *Assembly Documents*, no. 189 (1844), VII, 20.

amongst his eleven children.⁸¹ This was finally completed in three divisions ending in 1753. The Van Cortlandts leased out their lands for long terms of years or of two lives in being at low rentals.⁸² They appeared to be willing to sell the land in fee simple as soon as a price could be agreed upon.⁸³ Their tenants in possession were generally given the opportunity to purchase before anyone else and to secure renewals of leases. Furthermore, alienation fees like the quarter-sales were uncommon. In practice, tenants did not begin to apply for the fee until the Revolutionary period.⁸⁴ Thus as late as 1769, when DeLancey unsuccessfully tried to extend jury duty to include Cortlandt and Philipsborough tenants holding lands worth sixty pounds "for years or at will," a great part of those settled upon Cortlandt Manor and all settled upon the Manor of Philipsborough, were holders of estates less than freehold, ownership of which involved jury duty.⁸⁵ Furthermore, when the Van Cortlandt heirs neglected, until 1734, to exercise the right of sending a delegate to the Assembly, the Legislature substituted its own prerogative for that of the Patent to con-

81 Scharf, *Hist. of Westchester*, I, 130. Agreements to divide were dated Nov. 13, 1730; surveys undertaken 1732; preliminary divisions 1732 and 1733 were made but an agreement to make a final one in 1753. *Ibid.*, I, 131-132; Schuyler, *Colonial N. Y.*, I, 200.

82 Bayard-Campbell-Pearsall, New York Counties Land Papers, no. IV, contain some examples of life estates: Bayard to Lenebeker, May 1, 1732; to Winn, Nov. 1, 1732; to John Lent, May 1, 1733. All these have clauses making the tenant responsible for taxes.

83 For example the lease to John Lent has attached an assignment of the lease, dated April 18, 1771, to the executors of William Bayard by Hendrick and William Lent in return for the land in fee simple. *Ibid.*

84 The Revolution checked this movement entirely, but it began again from 1787 or 1788 onward until by 1847 there were only 2,500 to 3,000 acres of leased land left on the whole manor. Scharf, *op. cit.*, I, 95, 133, 139, 178-179; Spaulding, *N. Y. in the Critical Period*, pp. 67, 68. These authorities unfortunately cite no primary sources for improvement of conditions on Cortlandt Manor. I have made fruitless search for more deeds and leases than I have indicated above. *Cp.* 137, 160, 202.

85 *Journal of the General Assembly of New York*, Nov. 21, 1769-Jan. 27, 1770, pp. 5-6, 80; Scharf, *op. cit.*, I, 91.

tinue the right of the forty-pound freeholders of the manor to their additional elected representative.⁸⁶ These circumstances, in addition to good land and thrifty habits, made the Cortlandt farmer's lot seem somewhat better than that of his Rensselaer and Livingston fellows.

With the exceptions noted above, the conveyances of the patentees were similar to those of the manorial lords. The rent rolls of a Philipse lot in the Highland Patent in 1768⁸⁷ reveal that many of the "tenants" were the original ones. Perhaps they were owners of freeholds obliged to pay perpetual rents like Moss Kent. He had received from Philip Philipse a grant of 118 acres to himself and "his heirs and assigns forever" for £8 annually in perpetual rent and a consideration in hand of £31. Philipse had reserved the mines and minerals, and had retained a right of reentry and repossession upon failure to pay rent. The whole lot contained forty-nine farms of 9,400 acres at £200 rent, an average of 200 acres at £4 rent. Most of the Philipse tenants on the Manor of Philipsborough, where Frederick Philipse seems never to have sold an acre of his inheritance, had life estates without the benefit of any written conveyance.⁸⁸ Upon their deaths it was common for the land

⁸⁶ Act of June 22, 1734, *Colonial Laws of New York*, II, 835-837; Scharf, *op. cit.*, I, 124-5, 180-181, n. 3.

⁸⁷ Philipse-Gouverneur Land Titles, no. 19. This also contains a grant to William Prendergast dated May 19, 1774 in the Upper Patent, of land "in his actual possession for several years past," for a consideration of £137 and a quit-rent of £5-18s.-1½d. to crown officers and 20 shillings more to the landlord. *Ibid.*, no. 3. Prendergast was one of the ringleaders in the anti-rent movement of 1766. The spelling of his name is after the tombstone in the Prendergast Cemetery, Chautauqua, New York. Cf. Anderson, A. W., *The Story of a Pioneer Family*.

⁸⁸ Bristol, T. H., "Abstracts of Sales by the Commissioners of Forfeitures in the Southern District of New York State" in *New York Genealogical and Biographical Record*, LIX (1928), 108; Scharf, *op. cit.*, I, 91. DeLancey says that all the tenants of Philipsborough were disqualified for jury service which means that they must have had estates less than freehold or freehold estates valued less than sixty pounds. *Journal of the General Assembly of N. Y.*, Nov. 21, 1769-Jan. 27, 1770, p. 5; *Colonial Laws of N. Y.*, III, 185, 599; cf. *ibid.*, I, 387, 708, 1021; II, 345. Beverly Robinson testified that neither

and improvements to revert to the lord. Bequests could be made only "with permission of Col. Frederick Philipse."⁸⁹ Philipse apparently had the right to raise the rents, though it was not clear whether he could succeed in ejectment proceedings against his tenants.⁹⁰ Although his tenants could sell the improvements with his consent, they were required to pay alienation fees of one third the value of the sale. The accumulation of these alienation fees frequently exceeded the value of the fee simple itself.⁹¹

The typical grants or leases issued by Van Rensselaer, Livingston, Van Cortlandt, and Philipse were not the only oppressive ones. For example, most of the Schuyler conveyances were freehold grants for a term of three lives,⁹² although there were a few fees simple with reservations of perpetual rent,⁹³ and long and short term leases.⁹⁴ All his conveyances included a one-day work provision, a mill toll, and a right of distraint. Duane's conveyances in Duanesburgh were customarily grants with perpetual reservations of rents and of other usual rights,⁹⁵ and life estates for the term of three lives renewable forever

Colonel Philipse nor any of his ancestors ever granted any lease in writing except to tenants on the "Upper Mill." American Loyalist Transcripts, XLI, 632-634.

89 Frederick Brown's will, dated January 12, 1766, and Joshua Bishop's, August 23, 1775. Hall, *Philipse Manor Hall at Yonkers*, p. 115.

90 Testimony of James DeLancey, Jr., John Watts, J. T. Kempe, American Loyalist Transcripts, XLI, 621-622, 626-629.

91 *Ibid.*, pp. 592, 621, 624, 626, 629. Smith, Richard, *Tour of Four Great Rivers... 1769*, p. 5; *Journal of Charles Carroll of Carrollton During His Visit to Canada in 1776*, p. 57.

92 For example, A. Pawling to Thomas Baker, March 26, 1741. Cf. Schuyler Papers, Land Papers D-P (no. 20). See also *ibid.*, 1684-1789 (no. 16).

93 Like Catherine Pawling to Johannes Steers, July 30, 1756, *ibid.*, no. 20; P. Schuyler to John Flack, April 5, 1768 contained a reservation of quarter-sale. *Ibid.*, no. 16.

94 Catherine Pawling to John Hamblein *et al.*, Dec. 29, 1752 for 20 years; and Albert Pawling and wife to Jacob Ostrander, May 14, 1742 for 2 years, *ibid.*, no. 20.

95 Spaulding, *op. cit.*, pp. 55, 63; Bigelow, *Writings and Speeches of S. J. Tilden*, I, 188-94.

on the expiration of any life by the payment of a year's rent. The first five to ten years were usually free, except for the quit-rent and an acknowledgment of a penny per year. For the period before the Revolution, there were fifty-one grants of about one hundred acres each; of these, twenty-one were in fee simple; twenty-three, for three lives; three, for short periods; and four, upon miscellaneous terms.⁹⁶ However, the conditions on the Schuyler Patent and Duanesburgh, which here did not precipitate violent conflicts, were not complicated with disturbing Indian claims and boundary disputes which crystallized the small farmer's struggle for security on Rensselaerswyck, Livingston and Cortlandt Manors, Philipse's Highland Patent, and the New Hampshire Grants.

Apparently the sales policies of landlords left the size of New York grants from colonial governors almost intact. This concentration of landed estates, the vague bounds of which permitted even further aggrandizement, had a discouraging effect upon the development of a small farmer class. A long line of colonial officials believed that the lack of opportunity for small farmers to acquire secure and definite holdings helped to account for the relative underpopulation of New York.⁹⁷

⁹⁶ Alexander, *James Duane*, pp. 58-59, and nn. 28 and 29; Johnson to Duane, April 6, 1762; Duane to Yates, April 20, 1774, Duane Mss, I, III; Duane to Livingston, Nov. 26, 1770, Redmond-Livingston Mss. E. P. Alexander wrote, "The eve of the Revolution found Duanesburgh securely planted. Twenty-eight families were holding 3,000 acres in fee, and 20 more were leasing 2,600 acres, while Duane's reserved farms, on which he was beginning to build, totaled 3,000 acres. Philip Schuyler once stated that New York landlords made their money by charging as much as one-fourth the value of a farm on every transfer of property from one tenant to another." Alexander, *op. cit.*, p. 66. Cf. *Journal of Charles Carrol of Carrollton*, p. 57. See Alexander, *op. cit.*, pp. 61-65 for the life of a Duane tenant.

⁹⁷ The population statistics of some colonies exceeding New York in inhabitants were (in thousands):

	1750	1760	1770
Mass.	180.0	235.0	265.0
Conn.	100.0	142.0	175.0
N. Y.	80.0	113.0	160.0
Penn.	150.0	220.0	250.0

Bellomont had warned the Lords of Trade that it was impossible for the country ever to be settled, since men would not undertake clearing the land unless they were assured of ownership.⁹⁸ "What man," asked Bellomont, "will be such a fool as to become a base tenant to Mr. Delius, Colonel Schuyler, Mr. Livingston . . . when, for crossing Hudson's River that man can for a song purchase a good freehold in the Jerseys." ⁹⁹ Governor Hunter in 1710 and William Smith in 1756¹⁰⁰ made similar observations. Colden, declaiming against large grants sold for trifling sums, said that they were "a discouragement to the settling & improving the lands in the neighbourhood of them, for from the uncertainty of their boundaries, the Patentees of these great Tracts are daily enlarging their pretensions, and by tedious & most expensive Law-suits, distress and ruin poor families who had taken out grants near them . . ." ¹⁰¹ Peter Van Schaack deplored the incessant litigation that arose from uncertain bounds. He believed that the actual possessors were thereby deterred from making improvements.¹⁰² Modern authority has for the most part followed

Md.	137.0	162.0	200.0
Va.	275.0	346.0	450.0

A Century of Population Growth from the First Census of the United States to the Twelfth 1710-1900, Table I, p. 9. For estimates in the Revolutionary period, Sutherland, Stella H., *Population Distribution in Colonial America*, p. xii.

⁹⁸ Oct. 19, 1698, *Doc. Rel. to Col. N. Y.*, IV, 393.

⁹⁹ *Calendar of State Papers, Colonial Series, America and West Indies*, 1700, p. 678.

¹⁰⁰ For Hunter's complaint to the Board of Trade on Nov. 14, 1710, cf. *Doc. Rel. to Col. N. Y.*, V, 180. Noting "the discouragements against the full settlement of the province," Smith remarked, "... very few persons could either purchase or lease them. . . . The patenting of lands, has long been, and still continues to be, very expensive." *The History of the Province of New York*, I, 276, 310.

¹⁰¹ September 20, 1764 to the Lords of Trade, *Doc. Rel. to Col. N. Y.*, VII, 654. See also *ibid.*, p. 795; *Colden Letter Books*, I, 362-364.

¹⁰² Van Schaack, *Memoirs of the Life of Henry Van Schaack*, pp. 22-25.

their views.¹⁰³ If landlord beneficiaries could express misgivings on the landed system, how much unexpressed resentment must the small farmer victims of these conditions have stored?

No treatment of the relationship of the legal incidents of the land system to social discontent would be adequate without a consideration of the real property law that propped this system in behalf of great landlords. Whatever service the common and statute law of England rendered to the landed aristocracy of the mother country in this respect, was duplicated for the colonial landowners to the extent that this law was received in the colonies. Enough has been said to show that the common law received early recognition in colonial New York.¹⁰⁴ Chief Justice Morris observed in 1732, "Your Majestie and your Royall Predecessors have been Graciously Pleased by the general tenor of your instructions to your Governours to make the laws of England the Standard rule and Measure by which your Subjects inhabiting the Province of New York should be governed as nearly as the circumstances of dominions So distant would admit."¹⁰⁵ Apparently Chief Justice Morris saw that the common law of England was being introduced by a series of directions and commissions so subtle as to escape the notice of

103 Turner held, "One of the most important factors in restraining density of population in New York, in retarding the settlement of its frontier, and in determining the conditions there was the land system of that colony . . . in the competition for settlement between colonies possessing a vast area of vacant land, those which imposed feudal tenures and undemocratic restraints, and which exploited settlers, were certain to lose." "Old West," *Proceedings of Wis. Hist. Soc.*, 1908, pp. 195-197. Spencer stresses politics in land policy and in the administration of the land office. Spencer, *loc. cit.*, pp. 151-2. Cf. Higgins, *op. cit.*, pp. 24-25, 27; Sutherland, *op. cit.*, pp. 80-83. But W. A. Knittle disagrees with Turner. He contends that the bad land policy of New York was not known in Germany, and that more Germans went to Pennsylvania because of superior propaganda. *The Early Eighteenth Century Palatine Emigration*, p. 221.

104 Reinsch, "English Common Law in the Early American Colonies," *loc. cit.*, I, 390-395; Dale, R. C., "The Adoption of the Common Law by the American Colonies," *University of Penn. Law Review*, n. s. XXI (1882), 553-574.

105 Cited in Fowler, *Facsimile of the Bradford Laws of N. Y.*, p. xc.

duller eyes. However, a complete doctrine of the binding force of the common law in New York was not declared until 1761.¹⁰⁶

Note has also been made of the reception of English statutes by the colonists of New York.¹⁰⁷ While English statutes such as those abolishing feudal tenures did not automatically apply to New York, under the rule in *Calvin's Case*, those which were deemed to express the king's will, did.¹⁰⁸ The whole question of precisely what was law and what was not in colonial New York has never been satisfactorily settled.¹⁰⁹ On the eve of the Revolution, Tryon stated, "The Common Law of England is considered as the Fundamental law of the Province, and it is the received Doctrine that all the Statutes . . . enacted before the Province had a Legislature, are binding upon the Colony, but that Statutes passed since do not affect the Colony, unless by being specially named, such appears to be the Intentions of the British Legislature."¹¹⁰

106 Reinsch, *loc. cit.*, I, 393. But in 1762 Chief Justice Pratt complained to the Board of Trade of the insufficient influence of the judiciary.

107 *Vide supra*. Sioussat, "The Extension of English Statutes to the Plantations," *loc. cit.*, I, 416 *et seq.*

108 See above for discussion of conflicting authorities on the extension of the Statute of Westminster III, 18 Edw. I, c. 1; and Statute of 1660, 12 Car. II, c. 24. Note especially the conflicting views of J. Goebel ("Legal and Political Aspects of the Manors of N. Y.," *loc. cit.*, pp. 9-10, *et passim*) and R. L. Fowler (*Hist. of Law of Real Property in N. Y.*, pp. 22-27, *et passim*). See also Sioussat, *loc. cit.*, I, 417-422.

109 *Ibid.*, I, 429-430; Chalmers, *Opinions of Eminent Lawyers*, I, 194-225. There is an excellent discussion of this point in connection with the applicability of the Statute of Frauds (29 Car. II, c. 3) to conveyances by allotments. *Beers v. Hotchkiss and Campbell et al.*, 256 N. Y. 41.

110 *Doc. Hist. of N. Y.*, I, 754. See Fowler, *op. cit.*, p. 2 to the same effect. Cf. 1732 William Smith wrote, "The common law of England is generally received, together with such statutes as were enacted before we had a legislature of our own. But our courts exercise a sovereign authority, in determining what parts of the common and statute law ought to be extended. . . . In many instances they have also extended, as I have elsewhere observed, even acts of parliament, passed since we have had a distinct legislature, which is adding greatly to our confusion." *History of the Province of N. Y.*, I, 309. Chief Justice Horsmanden stated the same rule in *Forsey v. Cunningham* (1764).

Sometimes colonial enactments specifically extended Parliamentary statutes. But some colonial recitals asserted that "diverse Acts of Parliament passed since the Establishment of a Legislature in this Colony have nevertheless been practised upon us extending to this Colony; tho' they are not declared in said Acts to extend to the Plantations"¹¹¹ and that "the Statute for the Prevention of Frauds and Perjuries hath been received by Usage as Law in this Colony..."¹¹² Although, in absence of specific enactment, rules in England thus became incorporated by analogy and usage, there was no uniform practice. Thus Governor Moore complained that so great were "The uncertain determinations, and different opinions of the Judges relative to Acts of Parliament, . . . that in effect the issues of a cause depended not so much on the right of a Client, as on the breath [*sic*] of the Judge, and what was looked upon as a very good plea in one circuit was disallowed in another."¹¹³

There were only a few variations from contemporary English law in the law of real property in New York.¹¹⁴ For example, the common law rule was never fully adopted in the case of mortgagors who, rather than mortgagees, have always been regarded in colonial New York as owners of the fee.¹¹⁵ This exception is noteworthy since the New York rule thus favored the landowner rather than the money-lender. Another important exception to the law in England was the practice of the Long Island towns, following the usage of New England, of making

111 An act of Dec. 24, 1767 extended many Parliamentary acts to the Colony, though it was vetoed by the Crown in 1770. *Colonial Laws of N. Y.*, IV, 953; *Doc. Rel. to Col. N. Y.*, VIII, 14.

112 March 19, 1774, *Colonial Laws of N. Y.*, V, 689.

113 February 26, 1768, *Doc. Rel. to Col. N. Y.*, VIII, 14.

114 Fowler, *op. cit.*, p. 2.

115 Gager, E. B., "Mortgages of Real Property," *Two Centuries Growth of American Law, 1701-1901*, pp. 157-158; Thomas, Abner C., *A Treatise on the Law of Mortgages of Real Property in the State of New York*, pp. 9, 21-22. Unfortunately neither cites any New York colonial cases.

conveyances by allotments.¹¹⁶ Such conveyances were confirmed in 1726 and future ones authorized by a colonial enactment.¹¹⁷ The recital accepting the usage of allotments read,

Whereas much the greater Number of the Townships settled in this Province in dividing their Lands amongst themselves have done the Same by Virtue of and according to the directions of the Votes of the Freeholders and Inhabitants at their Publick Town meetings from time to time Assembled for that purpose which divisions being generally very well accepted of and Acceded to by the respective Proprietors and Possessors of those Lands.¹¹⁸

Attorney-General John T. Kempe upheld this view in a letter to Colden in which he wrote,

I understand that the Township was granted in Joint Tenancy and that all the Right the Inhabitants have to hold in severalty is the Orders made at their Town Meetings, and entered in their Minutes, & that tho this could convey no legal Title to hold in severalty, yet the Courts of Justice, considering the Ignorance of those Times, and the Confusion the Contrary would introduce, have admitted them as valid for that Purpose.¹¹⁹

Thus the general acceptance, with a few exceptions, of English common and statute law, extended props to colonial landed interests somewhat similar to those of their English compeers.

116 From 1679 to 1782, *Book of Records of Town of Southampton*, II, 76, 86, 91, 110, 117, 123, 125, 137, 143, 146-166; III, 7, 13, 24, 74, 82, 88, 92, 97, 106, 120, 129, 191, 195, 205-8, 230, 240, 294-301. On this point Cardozo, J., has given an opinion containing a brilliant excursion into colonial legal history. *Beers v. Hotchkiss and Campbell et al.*, 256 N. Y. 41. Cf. *Codman v. Winslow*, 10 Mass. 146; *Inhabitants of Springfield v. Miller*, 12 Mass. 415; *Coburn v. Ellenwood*, 4 N. H. 99.

117 Nov. 11, 1726, *Colonial Laws of N. Y.*, II, 329, 336, 337. Because the act included a provision for informal partition which had aroused criticism, it was repealed by the King on Feb. 15, 1728. *Ibid.*, II, 329; cf. *Doc. Rel. to Col. N. Y.*, V, 807, 808, 809 subdivision 10.

118 *Colonial Laws of N. Y.*, II, 336.

119 Report of Nov. 27, 1764, *Colden Papers*, VI, 391.

If security of tenure was never the object of strenuous exertions by the landlord in behalf of his tenants, it certainly was his chief concern when his own title was involved. Many were the steps taken to make the landlord certain of his property right. The very first patent to the Duke of York, in March 1664, gave a title clouded with doubts raised by the fact that it was conveyed before the British conquest of New Netherland in August 1664 and before the Treaty of Breda in July 1667 formally ceded the province to the English crown. The formal cession was consummated by an *uti possidetis* clause which authorized the parties to retain what they had acquired by force during the war.¹²⁰ This cloud, which hovered over all who derived title from the Duke, was dissipated by a new proclamation and patent in 1674, confirming "all former grants, privileges or concessions heretofore granted and all estates legally possessed by any under his Royall Highnesse before the late Dutch government." By virtue of these measures the Dutch *antenati*, those born before the Dutch surrender, were assumed to have preserved their rights under the articles of capitulation of 1664.¹²¹

To make claims of title certain, the Duke's laws of 1664 and 1674 ordained that all deeds express a *habendum* clause, defining the extent of ownership, in the words "To have and to hold the said houses and Lands Respectively to the party or grantee, his heirs and Assigns forever." Furthermore it was provided that no sale of land was valid "except the same be done by Deed in writing under hand and Seal and delivered and possession given upon part in the name of the whole. . . . Unlesse the said Deed be Acknowledged and Recorded according to

120 In fact, war had not been formally declared against New Netherland until Feb. 22, 1665. Cf. Fowler, *Hist. of the Law of Real Property in N. Y.*, pp. 9, 16; also his *Facsimile of the Bradford Laws of N. Y.*, p. xliv.

121 *Doc. Rel. to Col. N. Y.*, III, 227; V, 495; Fowler, *Hist. of Law of Real Property in N. Y.*, pp. 15-16; *Colonial Laws of N. Y.*, I, 104-105. Dutch owners were compelled to take out confirmatory patents. Fowler, *Facsimile of Bradford Laws of N. Y.*, p. xcii.

Law.”¹²² The requirement of written conveyances was repeated in 1683 and 1684.¹²³ Whether New York had a recording system after 1691 is a moot question in view of a resolution declaring all prior laws under the Duke of York void.¹²⁴ William Smith did not believe that registry was necessary to validate a conveyance, although recent authority notes that the registration of conveyances was in fact observed for years.¹²⁵ That conveyances were recorded and that such records, acknowledged in a specified manner, were receivable as evidence in the courts as if the original writing had been produced, appear from acts of 1710, 1771, 1773, and 1775, an ordinance of 1723, and the files of the Secretary of the Province.¹²⁶ We have seen how

122 *Colonial Laws of N. Y.*, I, 30, 107; Fowler, *ibid.*, p. xciv; Fowler, *Hist. of Law of Real Property in N. Y.*, p. 16.

123 *Colonial Laws of N. Y.*, I, 142, 148; Nissenson, S. G., “The Development of a Land Registration System in New York,” *New York History*, January, 1939, pp. 32-33.

124 April 24, 1691, *Journal of the Votes and Proceedings of the General Assembly of the Colony of New York, 1691-1743*, p. 8. This resolution does not appear to have received the approval of the Governor or Council which was needed to make it a law. Cummings, R. C., in *Colonial Laws of N. Y.*, Vol. I, pp. xix, xx. See *Jackson ex dem Woodruff et al. v. Gilchrist*, 15 Johns. Rep. 89. Fowler’s view is on neither side. William Smith held these laws were void. *Hist. of the Province of N. Y.* (London, 1757) p. 73; *Facsimile of the Bradford Laws of N. Y.*, p. lxxxii. J. Goebel holds a contrary view. “The Courts and the Law in Colonial New York,” in Flick, *Hist. of N. Y.*, III, 33. Cardozo, J., says that the applicability of Colonial Statutes, after the new commission of 1686 to Dongan (*Colonial Laws of N. Y.*, I, 178) and the resolution of 1691, is still a theme “for antiquarian research.” *Beers v. Hotchkiss and Campbell et al.*, 256 N. Y. 41, at 53. See also the commission to Henry Sloughter, Nov. 14, 1689, *Colonial Laws of N. Y.*, I, 221; and Nissenson, “Land Registration,” *loc. cit.*, pp. 37-41.

125 Goebel, *op. cit.*, p. 33; William Smith’s testimony on Roger Morris’ claim, American Loyalist Manuscripts, XLIII, 312. Cf. Nissenson, S. G., “Land Registration,” *loc. cit.*, April, 1939, pp. 163-64. Acts of the General Assembly appeared to have the force of law long after the adoption of the resolution of 1691. See “Minutes of the Supreme Court of Judicature, 1693-1701,” for April 4, 1693 and Oct. 7, 1699, in N. Y. Hist. Soc., *Collections*, 1912, XLV, 43, 173, applying respectively acts of October 22 and 23, 1684, *Colonial Laws of N. Y.*, I, 147-150.

126 Oct. 30, 1710; Feb. 16, 1771; March 8, 1773; April 3, 1775, *Colonial Laws of N. Y.*, I, 712; V, 202, 534, 876; *An Ordinance for Regulating the*

Attorney-General Kempe's opinion upheld conveyances by allotments only as usage that was an exception to the prevailing rule.¹²⁷ Certainly there was sufficient precedent for a recording system—in Dutch home and colonial procedures, the English judicial and statutory practices, the local customs of places like York and Middlesex, and the colonial statutes of Plymouth and Massachusetts.¹²⁸

That a system of recording was the special concern of the large landowner is suggested by four considerations. Firstly, the size of his holding made him especially interested. Secondly, the expenses involved in traveling, drawing up papers, and paying fees virtually barred the small farmer-owner. Thirdly, the large owner, unlike the small one, usually had a lawyer to advise him on all technicalities. Finally, the small farmer, desirous of hiding assets, would hesitate to reveal easily hidden ones. In this connection the acts for registration of mortgages passed in 1753 and 1774¹²⁹ are significant since their purpose was to protect mortgagees whose money-lending functions were certainly not fulfilled by an impecunious small farmer class.

The efforts at settling title were continued by a great many statutes in which large landowners were particularly interested. A number of acts were passed in 1683 which gave title, despite

Recording of Deeds and Other Writings [1723], by Governor William Burnet, August 22, 1723 (N. Y. Hist. Soc.); *Colden Papers*, IX, 64. Of course the existence of recorded conveyances in the Deed Books in the Office of the Secretary of State, is proof enough of at least optional recording facilities.

127 *Colden Papers*, VI, 391.

128 In 1638 all legal instruments in New Netherland were deemed invalid unless written by the provincial secretary. The general register recorded these agreements. Beale, J. H., Jr., "The Origin of the System of Recording Deeds in America," *Green Bag*, XIX (1907), 335-9; also Morris, *Studies in the Hist. of Am. Law*, pp. 69-71; Nissenson, "Land Registration," *loc. cit.*, pp. 19-32. In English boroughs and cities title was passed by judicial process in local courts; statutes called for the enrolling of deeds of bargain and sale. A Plymouth statute was in effect on June 24, 1637; a Massachusetts act, on October 7, 1640. Beale, J. H., *loc. cit.*, pp. 335, 337; *Records of the Governor and Company of Mass. Bay in New England*, I, 306.

129 *Colonial Laws of N. Y.*, III, 957-59; V, 687-89.

the loss of deed, to the long-continued possessor of land without adverse claim, and which required recording of deeds. One in 1684 cut the prescription period for unintermitting enjoyment of possession to seven years.¹³⁰ In 1691 all existing charters, patents, and grants were held valid notwithstanding deficiencies in form.¹³¹ A partition act of 1708 made possible a method of division which in effect nullified the limitation upon the size of grants in the instructions of 1698 by practically insuring that all uncertainties of boundaries should be resolved in favor of the grantees.¹³² In 1709 a bill was even introduced "to confirm all illegal grants and usurpations of the Queen's land"; but this was dropped.¹³³ A prescriptive right to title accrued to all in possession of the land from October, 1700 to September, 1713.¹³⁴ The naturalization act of 1715 had the effect of saving titles derived from aliens who had held land prior to the Dutch surrender or who might have neglected to have become naturalized after 1683.¹³⁵ Indeed the attorney-general vainly urged the disallowance of this act because its purpose was merely to strengthen land titles and not to encourage migration.¹³⁶ Finally an act of 1770 cured all former defects in the titles of those citizens who were in possession of estates under patent or grant to an alien inhabitant.¹³⁷ Thus did the landlord achieve

130 *Ibid.*, I, 136-137, 141-142, 154-156.

131 Fowler, *Facsimile of the Bradford Laws of N. Y.*, pp. 6-7; *Colonial Laws of N. Y.*, I, 224-225.

132 Spencer, *loc. cit.*, p. 157; *Colonial Laws of N. Y.*, I, 633-636. The act expiring in 1715 was continued by later enactments in 1715 and 1718. *Ibid.*, I, 882, 1006.

133 *Doc. Rel. to Col. N. Y.*, V, 406-7.

134 *Colonial Laws of N. Y.*, I, 712-713.

135 The articles of surrender in 1674 and the Act of 1683 naturalizing all foreign Christian inhabitants then in the colony covered the other alien titles. *Doc. Rel. to Col. N. Y.*, V, 416, 496; *Colonial Laws of N. Y.*, I, 858-863; *Journal of Legislative Council*, I, 305, 386.

136 *Doc. Rel. to Col. N. Y.*, V, 497; Carpenter, A. H., "Naturalization in England and the American Colonies," *American Historical Review*, IX (1904), 302.

137 Fowler, *Hist. of Law of Real Property in N. Y.*, p. 64; *Colonial Laws*

for himself security of tenure which he was generally reluctant to grant his tenant.

The law of inheritance of an intestate's realty through entails and primogeniture favored the development and maintenance of a landed aristocracy. The theory of indivisibility of baronies and military fiefs, brought by the Norman to England, had been extended to non-military socage tenures. It had been strengthened in 1285 by the Statute *De Donis Condition- alibus*¹³⁸ which founded the estate tail by preventing the alienation of estates by those who held only a partial interest to the detriment of those who were to take title subsequently. Despite collusive procedures developed by fifteenth century courts to circumvent the intention of the statute, the system of entails acted as a restraint upon the alienation and widespread distribution of realty generally in favor of the eldest son.¹³⁹ In 1683 the first colonial assembly of New York showed that they approved of English practice by resolving: "That from hence forward Noe Lands Within this province shall be Esteemed or accounted a Chattle, or personall Estate but an Estate of Inheritance according to the Custome and practice of his Majesties Realme of England."¹⁴⁰ Stephan Van Cortlandt's will providing for an equal division of his estate amongst his eleven children was the exception rather than the rule in the eighteenth century.¹⁴¹ More usual was the will of Frederick Philipse which devised an entail made in accordance with the

of N. Y., V, 77-78, also 202-204, 534-537, 850-856. Note also an act of 1774 "for the better Security and more easy recovery of Rents and renewal of Leases and to prevent Frauds committed by Tenants." *Ibid.*, V, 624-636.

138 Statute of Westminster II, 13 Edw. I, c. 1. See Fowler, *op. cit.*, pp. 26, 40, 43, 44.

139 Morris, *op. cit.*, p. 74. He cites *Blankard v. Galdy*, 2 Salk. 411, as basis for the contention that in a conquered country, prior to the conqueror's assertion of the law, natural equity should prevail. In such case equal division of an intestate's property to all his children, saving a double portion to the eldest son, should rule. Morris, *op. cit.*, pp. 117-118.

140 *Colonial Laws of N. Y.*, I, 114.

141 *Vide supra*, p. 70, n. 81.

rule of primogeniture, first to his eldest son Colonel Frederick Philipse, the remainder to the Colonel's first son, then the second, and finally "every other son and sons of the Body of my son . . . and of second sons . . . each to take in seniority of Birth, and successively one after the other . . ." ¹⁴²

The inherent danger in the consolidation of large estates in the hands of few individuals through inheritance disturbed, as we have seen, many colonial minds. The dread of land aggrandizement, which must have weighed heavily, though inarticulately, upon the hearts of the small farmer victims of the practice, found expression amongst landlords themselves. In 1733 William Alexander presented a forceful memorial to the Governor of New York in favor of small estates and fees.¹⁴³ However, it was not until 1782 ¹⁴⁴ that estate tail was converted into a fee simple absolute; and primogeniture based upon the canon of descents of England, transformed into partible inheritance, in which all the issue of equal degree shared alike.¹⁴⁵ But not even then did laws cease to add the weight of their dignity to an inequitable land system.¹⁴⁶ Nor was the hand that drew the plough the hand that wrote the laws.

¹⁴² Dated June, 1751 with a codicil July 22, 1751, Philipse-Gouverneur Land Titles, no. 18 (Col. U.).

¹⁴³ Morris, *op. cit.*, p. 76.

¹⁴⁴ *Laws of the State of N. Y. 1777-1801*, I, 501-502.

¹⁴⁵ In default of issue the estates went in equal shares *per stirpes*, according to root or stock, to the next of blood of the last owner. Thus if descendants take title in this manner by representation of a parent, they share amongst themselves only the part that their parent would have got, rather than equally *per capita* with their parent's brothers and sisters. Fowler, *Hist. of Law of Real Prop. in N. Y.*, p. 73. R. B. Morris notes "that the philosophers of the Cotton Kingdom, convinced that conservatism was the best weapon for self-preservation, advocated, prior to the Civil War, the creation of entails and the reintroduction of primogeniture." *Studies in the Hist. of Am. Law*, pp. 123-124.

¹⁴⁶ That this did not democratize land holdings will be shown below.

CHAPTER III

POLITICAL POWER AND LANDLORD DOMINANCE

THE concentration of political power in the hands of the landed gentry, which compelled the aggrieved small farmers to seek remedies in armed outbreaks, was a reflection of the aggrandizement of large landed estates. That the ownership of the soil was accompanied by great economic and political power over the lives of others was clearly seen by Cadwallader Colden. In a letter to the English authorities he distinguished four different ranks among the people of New York.

The People of New York are properly Distinguished into different Ranks.

1st—The Proprietors of the large Tracts of Land, who include within their claim from 100,000 acres to above one Million of acres under one Grant. Some of these remain in one single Family. Others are, by Devises & Purchases claim'd in common by considerable numbers of Persons.

2nd—The Gentlemen of the Law make the second class in which properly are included both the Bench & the Bar. Both of them act on the same Principles, & are of the most distinguished Rank in the Policy of the Province.

3rd—The Merchants make the third class. Many of them have rose suddenly from the lowest Rank of the People to considerable Fortunes, & chiefly by illicit Trade in the last War. They abhor every limitation of Trade and Duty on it, & therefore gladly go into every Measure whereby they hope to have Trade free.

4th—In the last Rank may be placed the Farmers and Mechanics. Tho' the Farmers hold their Lands in fee simple, they are as to condition of Life in no way superior to the common Farmers in England; and the Mechanics such only as are necessary in Domestic Life. This last Rank comprehends the bulk of the People, & in them consists the strength of the Province. They are the most useful and the most Morall, but allwise the Dupes of the former; and often are ignorantly made their Tools for the worst purposes.¹

¹ To Secretary of State and Board of Trade, Dec. 6, 1765, *Colden Letter Books*, II, 68-69.

One need not entirely agree with Colden's classification of the social structure of colonial New York. Yet in it were contained the elements of a reasonable conception. Certainly the landed and commercial aristocracy comprised an upper class in colonial society.² The landlords were well represented on Long Island in the names of Remsen, Rapalje, Nicoll, and Smith; in Manhattan, Stuyvesant, Bayard, Heathcote, DeLancey, and DePeyster; in Westchester, Heathcote, Van Cortlandt, Philipse; in Dutchess, Philipse, Beekman, and Schuyler; and in Albany, Livingston, Van Rensselaer, Schuyler, and Johnson. Few merchants on the whole Atlantic seaboard had more impressive names than those of Van Dam, Cruger, Walton, Floyd, Rutgers, Ludlow, Alsop.³ Perhaps Colden's second class, the "Gentlemen of the Law" might quite reasonably be considered part and parcel of this same upper class.⁴ His fourth category of farmers and mechanics contained the urban and rural middle class who owned sufficient property to acquire freeman and freehold rights; and the lower class which at best lived on the borderline of a property-right insufficient to warrant the franchise privileges which the others had.⁵

Long before, Aristotle had remarked that the character and distribution of wealth in society determined the form of state. "When the rich grow numerous or properties increase the

2 C. L. Becker has a useful classification in *The History of Political Parties in the Province of New York, 1760-1776*, pp. 5-13 *et seq.* Sabine says, "To say that the political institutions of New York formed a *feudal aristocracy*, is to define them with tolerable accuracy. The soil was held by a few. The masses were mere retainers and tenants as in the monarchies of Europe." *Biographical Sketches of Loyalists of the American Revolution*, I, 28. Cf. Myers, *Hist. of the Supreme Court of U. S.*, pp. 14, 47 and his *Hist. of Great American Fortunes*, pp. 34-36.

3 R. B. Morris wrote, "The proprietors of the large estates and the lawyers were closely affiliated through family ties and together created a government by 'Junto.' Where in matters of property the influence of the 'Junto' was conservative, in constitutional matters, it served as a weapon of defense against the exercise of strict imperial discipline." *Studies in the Hist. of Am. Law*, pp. 64-65.

4 Becker, *op. cit.*, pp. 5-10.

5 Becker, *op. cit.*, pp. 10-11.

form of government changes into an oligarchy or a government of families. . .”⁶ Colden apparently believed that landed families dominated colonial politics.⁷ He was dubious of his ability to break grants which he believed were probably legally void, for “any attempt to break them will lay a Governor of this Province under great difficulties by reason that the owners of these are generally of great Interest in the Province, & will certainly employ all the most popular artifices in such cases in prejudice to the Governor which they can invent.”⁸

Land was a most important source of income in colonial New York. The great landed families tightened their control over economic and political power by an intricate mesh of marital connections. The strands of this mesh bound together the families of DeLancey, Livingston, Van Rensselaer, Schuyler, Van Cortlandt, and many others.⁹ At the funeral of Abraham De Peyster in 1767 one hundred relatives attended; they included representatives of Alexander, Bancker, Bayard, Beekman, DeLancey, DeLanoy, Jay, Jones, Kemble, Livingston, Lott, Marston, Morris, Philipse, Reade, Roosevelt, Rutgers, Rutherford, Schuyler, Stuyvesant, Van Cortlandt, Van Horne, Walton, and Watts. The lines of each family crossed those of many others; that of DeLancey touched a Johnson, a Watts, a Colden,

6 Jowett, B. and Davis, H. W. C., *Aristotle's Politics* (Oxford, 1905), p. 193.

7 See above for his persistent charges of landlord dominance. *Doc. Rel. to Col. N. Y.*, VII, 654-655; *Colden Letter Books*, I, 397, 450-451, 470; II, 70, 71, 73, 74, 84.

8 Colden to Lords of Trade, Jan. 25, 1762, *Colden Letter Books*, I, 156-157. Interestingly Colden was himself not above “popular artifices.” In an “Address to the Freeholders and Freemen . . .” dated December-January, 1747/8, in his handwriting, he apparently wrote, “The midling rank of mankind in all Countries & in all ages have justly obtain’d the Character to be generally the most honest. . . And I am likewise fully perswaded that we may much more safely trust our Liberty & Property with our neighbours of a midling rank than with those of the greatest riches who are thereby tempted to Lord it over their neighbors.” *Colden Papers*, III, 327; *Weekly Post-Boy*, Jan. 18, 1748.

9 Schuyler, “Patroons and Lords of Manors of the Hudson,” *loc. cit.*, no. 23, p. 28; Alexander, in Flick, *Hist. of N. Y.*, III, 147-151; and James Duane, p. 6; Becker, *op. cit.*, p. 13; Harrington, *The New York Merchant on the Eve of the Revolution*, pp. 11-15.

a Walton, a Jones; that of Livingston, an Alexander, a Smith, a Duane, a Van Cortlandt, a Beekman, a Ten Broeck, and a Schuyler.¹⁰

In view of these extensive interrelationships it was difficult for a governor who had spent the bulk of his life in America to remain free from the taint of nepotism in the granting of lands and offices. Even the family tree of Colden was laden heavily with the fruits of office. His son, Alexander, was surveyor-general, secretary-comptroller of the post-office, and post-master of New York; David, his father's private secretary and surveyor-general; and Cadwallader, Jr., a deputy surveyor-general. Amongst his grand-children were numbered Richard Nicolls Colden, surveyor and searcher of customs; John Antill, first clerk of the post-office; Peter DeLancey, Jr., stamp collector; Stephen DeLancey, clerk of Albany; John Watts, Jr., recorder; and John DeLancey, sheriff of Westchester County.¹¹

Nowhere was the power of the landlord in politics reflected more impressively than in the social background of the officials who functioned as governors, judges and attorneys, councilors and assemblymen. Colden had on many occasions denounced the dominant part that the landlord played in these capacities.¹² How much more resentful must the small farmers have been whose aspirations for social and economic improvement through political channels could receive little gratification? Thus, of the eight colonial executives who ruled New York from 1750 to 1776,¹³ at least six, including Colden himself, might be reckoned as great landlords holding land in New York exceeding 1,000 acres in extent.¹⁴ The other five were Admiral George Clinton,

¹⁰ Alexander, in Flick, *op. cit.*, III, 148, 149-151; Becker, *op. cit.*, p. 13.

¹¹ For nepotism in land grants see above. Alexander, in Flick, *Hist. of N. Y.*, III, 149-150.

¹² *Vide infra et supra.* Colden Letter Books, I, 156-157, 231, 397, 450-451, 470.

¹³ Sir Danvers Osborne has been omitted since his suicide cut his administration to two days. The other two were: Sir Charles Hardy and Robert Monckton.

¹⁴ This is obvious from our discussion above. All references to great land-

James DeLancey, Sir Henry Moore, John Murray, Earl of Dunmore, and William Tryon.

The judges of the most important courts were, in the words of Colden, "so united by intermarriages & otherwise (with landed families) that in few cases a cause of any Consequence, especially where the Kings Rights are concern'd can be brought before a Judge who is one of these families in which he can be supposed entirely disinterested & free from connections with those interested either in the Case or in other cases similar to it."¹⁵ Thus, from about 1730 to 1776, of the three chief justices of the supreme court,¹⁶ which usually handled land actions of consequence, at least two were great landlords. They were James DeLancey and Daniel Horsmanden.¹⁷ Of the ten associate or puisne judges in the same period, at least nine were large estate owners. These included: James DeLancey, Frederick Philipse, Daniel Horsmanden, William Smith, and Robert R. Livingston.¹⁸ Of the seven registers and principal surrogates from

lords will mean those owning at least 1,000 acres. Thus merchants owning that much land will also be considered as amongst these landlords. Footnotes have been cited only where the fact of ownership is not obvious from the text, previous citation, or common knowledge. For Clinton and Moore, see Deeds, XV, 317, 319, 327, 328; Patent Books, XVI, 132.

15 Colden to Earl of Egremont, Sept. 14, 1763, *Colden Letter Books*, I, 231; cf. *ibid.*, II, 70, 71, 450; *Doc. Rel. to Col. N. Y.*, VII, 654-655.

16 Benjamin Pratt was the third; but his incumbency was brief, from Nov. 11, 1761 to March 16, 1763. Werner, E. A., *Civil List and Constitutional History of the Colony and State of N. Y.*, p. 388.

17 Patent Books, XVI, 326, 328; Deeds, XIII, 21, 24; XIX, 254, 255. The best source for ascertaining the amount of land owned is the patent or deed granting them. The following have been used in the ensuing discussion: Patent Books, and Deeds, in the Land Office of the Secretary of State, especially the card index for these; the Sauthier Map, *Doc. Hist. of N. Y.*, I, 774; Bien, *Atlas of the State of N. Y.*, nos. 3 *et seq.*; French, *Gazetteer of the State of N. Y.*, pp. 49-52. *The Calendar of N. Y. Col. Mss Indorsed Land Papers* can be used to show the extent of interest in land in terms of petitions for claims, affidavits, certificates and warrants of surveys. Convenient lists of officials can be found in Werner, *Civil List and Const. Hist. of N. Y.*, pp. 388, 393, 371, *et passim*; *Calendar of Council Minutes*, pp. 6-9; and Chester, A., *Legal and Judicial Hist. of N. Y.*, I, 264-265, 289-290, 307, 316.

18 The others were: John Chambers, Whitehead Hicks, Thomas Jones,

about 1750 to 1776, who were also concerned with real property, six came from great landed families. Amongst them were Goldsbrow Banyar and Edward Fanning, the great land speculators, and Philip Livingston.¹⁹ That this characterized even those courts which did not deal with land is apparent from the fact that all four admiralty judges from 1736 to 1776²⁰ were great landlords: Lewis Graham, Daniel Horsmanden, Lewis Morris, and Richard Morris.²¹

Judicial scruples were sufficiently blunted to make it uncommon for a judge's indirect, and sometimes even direct, interest to bar him from judging. Thus Lord Dunmore himself presided in a suit against Colden, although he might have been the beneficiary of the judgment.²² Robert R. Livingston permitted himself to sit in a case the decision of which vitally affected the claims of his brother-in-law, James Duane, in the New Hampshire Grant region.²³ William Smith and William Alexander sat in Council on Nimham's claims against Philipse, a matter which seriously affected Robert Livingston, Jr., to

and George D. Ludlow. Werner, *op. cit.*, p. 388; Patent Books, VII, 395; XIII, 1; XIV, 25, 235, 431, 493; XVI, 75, 103; Deeds, XII, 379, 381, 390; XVI, 168; *Calendar of N. Y. Col. Land Papers*, 45, 94, 158, 205, 256, 262, 266, 277, 298-99, 321, 373, 379, 420, 478, 534-35. David Jones was interested in a smaller estate. *Ibid.*, p. 518.

19 Werner, *op. cit.*, p. 393. The other large scale owners were: Samuel Banyar, Jr., Francis Child, John French. Patent Books, XIV, 235; XV, 184; *Cal. of N. Y. Col. Land Papers*, pp. 153, 389, 420, 439-40, 448, 463, 469. Only John Godsby does not appear to be a landlord of means.

20 Werner, *op. cit.*, p. 371.

21 Patent Books, VII, 63; XVI, 9, 250, 471; XVII, 102.

22 *Vide supra*. In extenuation, Benton noted that Lord Dunmore acted as *ex officio* chancellor. The King had demanded a trial and hearing before himself and in theory the chancellor represented him. Benton, *The Vermont Settlers and the N. Y. Land Speculators*, p. 74.

23 *Peter Quiet ex dem John Small v. Isaiah Carpenter*. The judgment roll is in the Hall of Records, New York City. This was an ejectment proceeding for land in Shaftsbury, Jan. 28, 1770. H. Hall contends that Livingston was directly interested by virtue of his 35,000 acre grant in Cambden. *Hist. of Vt.*, p. 121. But Benton discounts this by observing that this land involved no New Hampshire grant. Benton, *op. cit.*, p. 73.

whose family both councilors were bound by marriage. In the trial of the anti-renters in 1766, despite this relationship, Smith did not withdraw from a bench which was called upon to judge yeomen who had rebelled against the Livingston interests.²⁴ Even the four attorney-generals from 1751 to 1776 were heavily interested in large landed estates: William Smith, William and John Tabor Kempe, and James Duane.²⁵

"The Gentlemen of the Law," wrote Colden rather harshly, "both the Judges & principal Practitioners at the Bar, are either Owners Heirs or strongly connected in family Interest with the Proprietors."²⁶ Of the thirty-three attorneys licensed from 1730 to 1776,²⁷ at least thirty were connected with the great landed families and at least two were owners of lesser estates. The names read like the roster of great landed families: James Alexander, Whitehead Hicks, Daniel Horsmanden, the Livingstons, Lambert Moore, Richard Nicolls, John Morin Scott, the Smiths, the Van Cortlandts, Peter Van Schaack, and many others.²⁸ In view of this, small wonder that Colden remarked, "It is not then improbable that

²⁴ *Vide infra*, pp. 133, 145, 157.

²⁵ Chester, *Legal and Judicial Hist. of N. Y.*, p. 290; *Cal. of N. Y. Col. Land Papers*, pp. 45, 205, 256, 262, 289, 299, 316-17, 321, 323, 338, 373, 377, 379, 420, 423, 426, 428, 470, 471, 535.

²⁶ Colden to Board of Trade, *Colden Letter Books*, II, 70. See also *ibid.*, II, 450.

²⁷ Chester, *op. cit.*, I, 264-5.

²⁸ Patent Books, XI, 138; XII, 101; XIV, 466; XV, 111; XVI, 103; Deeds, XIV, 359, XVIII, 245, 330; *Cal. of N. Y. Col. Land Papers*, pp. 104, 193, 209, 224, 247, 248, 250, 251, 265, 275, 289, 306, 403, 406, 413, 420, 422, 447, 469, 478, 491, 493, 509, 517, 534-35, 569, 584, 601. The other large-scale holders are: John Alsop, Samuel Clowes, Bartholomew Crannell, John D. Crimshire, Benjamin Helme, John Jay, Samuel and Thomas Jones, Benjamin Kissam, Abraham Lodge, John McEvers, Jr., John McKesson, David Matthews, and Rudolphus Ritzema. Patent Books, XI, 71, 116; XIII, 395; XIV, 25, 418, 431, 493, 524; XV, 45, 111, 162, 233, 250, 453, 465; XVI, 9, 75, 250. The two lesser landowners were Richard Harrison and William Searle. Three do not appear to have owned land: John Burnet, Elisha Parker, and Lancaster Green, although the first two were related to families who owned large-scale holdings. Patent Books, II, 234; IV, 189; VIII, 471; IX, 315; XI, 54; XIX, 128; *Cal. of N. Y. Col. Land Papers*, pp. 104, 512, 606.

Combinations may be made between the Bench and the Bar, whereby partial Juries may be procured, wholly influenced in favour of such great Interests." ²⁹

The Council was a stronghold of landlord power notwithstanding the addition of merchants after 1758.³⁰ Of the twenty-eight councilors who sat at some time between 1750 to 1776, at least twenty-five bore the names of conspicuously large landowning families.³¹ Some of the more prominent of these were: the Alexanders, George Clarke, Jr., Cadwallader Colden, the DeLanceys, Daniel Horsmanden, Sir William Johnson, Archibald Kennedy, Philip Livingston, Roger Morris, Joseph Reade, the Smiths, and John Watts.³² When James McDonald sought the consent of the Council to a grant of 10,000 acres authorized by the King, Colden claimed "Two-thirds of the Gentlemen of the Council being Interested in the

²⁹ Colden *Letter Books*, II, 450; *Conduct of Cadwallader Colden*, 29.

³⁰ Virginia D. Harrington says, "From 1758 on, however, there was a gradual change, practically all the new members being merchants of the court party, until by 1769 they numbered nine—John Watts, William Walton, Sr., Oliver DeLancey, Charles Ward Apthorp[e], Joseph Reade, Roger Morris, Henry Cruger, Hugh Wallace and Henry White, as against two lawyers, Daniel Horsmanden the chief justice of the province, and William Smith, Jr. This predominance was maintained until the Revolution for later appointees were all merchants." *The New York Merchant*, p. 39. This however should not obscure the fact that most of these merchants also had great landed interests as indicated below.

³¹ *Calendar of Council Minutes*, pp. 8-9.

³² Patent Books, VIII, 109; XII, 42, 412; XV, 35; Deeds, XV, 389; XVI, 149; XVII, 388; *Cal. of N. Y. Land Papers*, pp. 105-6, 126, 174, 175, 205, 236, 256, 262, 293-4, 298, 299, 321, 358, 362, 364-5, 371, 373, 375, 379, 468, 481, 531. Other large owners were: William Axtell, John Chambers, John Harris and Henry Cruger, Edward Holland, James Jauncey, Hugh Wallace, William Walton, and Henry White. Patent Books, I, 177; XII, 149; XIV, 235; XV, 45, 453; XVI, 75, 348; Deeds, XIV, 27, 28, 32, 37, 38; XVI, 351; XVIII, 187, 197; XIX, 27; *Cal. of N. Y. Col. Land Papers*, pp. 158, 266, 277, 296, 298, 328, 384, 417, 427, 447, 448, 452, 459, 464, 471, 486, 487, 488, 707. Charles Ward Apthorpe and Josiah Martin were owners of smaller estates, although the latter was of a large-scale owning family. Patent Books, XI, 278; Deeds, XIV, 13, 15; *Cal. of N. Y. Col. Land Papers*, pp. 503, 630. Joseph Murray and Benjamin Pratt held no land.

Dispute on which Oliver DeLancey & John Morin Scott have entered a caveat against Granting the Land . . . ”³³

In the Assembly, though Colden even here complained that it consisted “of the Owners of these extravagant Grants, the Merchants of New York, the principal of them strongly connected with the Owners of these great Tracts, by family Interest, & of Common Farmers,”³⁴ the landlords were proportionately smaller in number, though not in power, than in the Council.³⁵ Of the seventy representatives who sat any time between 1750 and 1776,³⁶ no less than fifty-two were from the families of great estates. Some of the more prominent of these were: William Bayard, Henry Beekman, George Clinton, the first revolutionary governor, the DeLanceys,³⁷ the Livingstons, Frederick Philipse, Philip Schuyler, Pierre Van Cortlandt, John Baptist Van Rensselaer, and John Watts.³⁸

33 Colden to G. Banyar, Aug. 1, 1765, *Colden Letter Books*, II, 25.

34 Colden to Board of Trade, September 20, 1764, *Colden Letter Books*, I, 363.

35 *Ibid.* Colden to Board of Trade, Dec. 6, 1765: “By these means, tho’ few of them are Members, they rule the House of Assembly in all Matters of Importance. The greatest number of the Assembly being Common Farmers who know little either of Men or Things are easily deluded & seduced.” *Colden Letter Books*, II, 71. He notes this dominance in connection with opposition to taxation. *Ibid.*, I, 362-4.

36 Hough, F. B., *The New York Civil List Containing the Names and Origin of the Civil Divisions* (Albany, 1858), pp. 105-8.

37 William Smith says, “Of the whole House (Assembly) the only wealthy able member neither connected with Mr. DeLancey nor in the sphere of his influence, was Mr. Livingston.” *Hist. of N. Y.*, II, 142-3; see also Becker, C. L., “Nominations in Colonial New York,” *American Historical Review*, VI (1901), 260.

38 Patent Books, XIII, 395; *Cal. of N. Y. Col. Land Papers*, pp. 293-294, 362, 364-65, 371, 375, 468. Other large estate owners were: Christopher Billop, Dirck Brinckerhoff, Jacobus Bruyn, David Clarkson, Thomas Cornell, Henry and John Cruger, John De Noyellis, Moses De Pue, Jr., Volkert P. Douw, Henry Filkin, Hans Hansen, Abraham Hasbrouck, Henry Holland, James Jauncey, Daniel Kissam, Leonard Lisenard, Johannis Lott, Eleazer Miller, Jacobus Mynderse, William Nicoll, John Rapalje, Paul Richards, Abraham Schenk, Jacob H. and Coenradt Ten Eyck, John Thomas, Isaac Vrooman, Jacob and William Walton, Peter Winne. Patent Books, IV, 97;

All the rest had to be owners of land or of freemen rights in order to qualify.³⁹

In short, of the one hundred and thirty-seven persons who held any of the executive, legislative, and judicial offices indicated above from about the middle of the century to the Revolution, one hundred and ten, eighty per cent, were large landholders, or related to such families;⁴⁰ six were small landowners; and twenty-one, fifteen per cent, held even smaller holdings or no land at all. Against such an array of landlord power, what prospect of improving his lot did the small farmer have in an appeal to executive, legislative, or judicial remedies?

The dominance of landlord interests in the New York Assembly was maintained by property qualifications for the franchise, and by pocket boroughs. The right to vote for representatives was limited to those who "shall have Land or Tenem'ts Improved to ye vallue of forty pounds in ffreehold free from all Incumbrances."⁴¹ In addition, the inhabitants of

V, 161, 603; VI, 229, 314; VII, 38, 80, 151, 222; VIII, 8, 41, 397; XI, 4, 166, 173; XII, 106, 149, 166; XIII, 98, 179, 343, 359, 434; XIV, 25, 66, 73, 289, 334, 379, 466, 508; XV, 111, 132, 265, 372, 478, 518; XVI, 2, 187, 398; XVII, 69; XVIII, 250, 465. Those related to large owning families included three small owners: Thomas Hicks, David Jones, and Cornelius Van Horne; and two who appear to have been granted no land: Cornelius Lott, and Philip Verplanck, although the latter acquired a portion of Cortlandt Manor through marriage. Patent Books, IV, 131; VI, 23; IX, 44; XIII, 50; XIV, 493; XV, 162; Deeds, XI, 491; *Cal. of N. Y. Col. Land Papers*, pp. 153, 214, 251, 518; Scharf, *Hist. of Westchester*, I, 130-31. Three were owners of lesser estates: Abraham Hasbrouck, Henry Wisner, and Nathaniel Woodhull. Patent Books, IV, 134; XII, 492; Deeds, XVII, 371; *Cal. of N. Y. Col. Land Papers*, pp. 91, 262, 269, 270, 294, 316, 468.

39 These were: Samuel Boerum, Peter Douw, Samuel Gate, Johannis Hansen, John Le Count, Paul Micheaux, Benjamin and Zebulon Seaman, Theodorus Snedeker, Selah Strong, Johannis Tappen, Abraham Ten Broeck, Vier D. Vander, Leonard Van Kleeck, Jacob Van Slyck.

40 This figure includes seven who did not each own more than one thousand acres but who were related to families who did.

41 Act of May 16, 1699, *Colonial Laws of N. Y.*, I, 405-408. This meant an estate in fee, for life, or by courtesy valued at £40. The charters of 1683 and 1691 expressed the same preference for control by landed gentry. Chester, *Legal and Judicial History of New York*, II, 151.

New York City and the city of Albany could vote after acquiring freemen's rights through apprenticeship or through purchase at fluctuating rates which differed for merchants and artisans.⁴² How exclusive voting rights, or their exercise, were is not apparent, though it seems to be clear that a considerable number of adult white males were not entitled to the franchise.⁴³ Apparently, many during the colonial period were unenfranchised "inhabitants" or "mechanics" who owned freehold estate worth less than forty pounds or encumbered with debts; who held estates less than freeholds as tenants; or who labored for others, for a living.⁴⁴

Even amongst the enfranchised the conditions under which elections were conducted tended further to strengthen the great land owners. A large proportion of the electorate resided within manors and large estates. The freeholders on the manors of Livingston and Rensselaerswyck, who generally followed the lead of their manorial lords, were in 1770 deemed to be sufficient to control the elections of Albany County.⁴⁵ In Westchester County, where by 1769 about five-sixths of the population were within the six manors, and at least one-third within Cortlandt's and Philipse's, the same influences were at play.⁴⁶ The great

42 *Colonial Laws of N. Y.*, I, 408. The cost in New York City fluctuated. At first it was £3, 12s. to merchants and £1, 4s. to artisans in addition to customary fees. But in 1707 it was 20s. and 6s. respectively; in 1731, £3 and 20s.; in 1763, £5 and 20s. In Albany in 1763 the rates were £3, 12s. to merchants, and 36s. to artisans. *The Burghers of New Amsterdam and the Free-men of New York, 1675-1866* in New York Historical Society, *Collections* for 1885, pp. 532-533, 45, 47-50, 51, 459, 467-468, 484; *The Charter of the City of Albany*, July 22, 1686, pp. 11-12.

43 Dr. Beverly McAnear, in a forthcoming paper entitled "The Suffrage in Provincial New York," has pointed out that Becker appears to have underestimated the extent of the franchise. Becker, *Hist. of Pol. Parties in N. Y.*, pp. 10-11.

44 Becker, *op. cit.*, p. 11.

45 Hugh Wallace to Wm. Johnson, Feb. 4, 1771, Johnson Mss, XX, 87; cf. *Doc. Rel. to Col. N. Y.*, VIII, 565; VII, 654-55; Kip, W. I., *The Olden Time in N. Y.* (N. Y., 1872), pp. 16-18; Becker, *op. cit.*, p. 14.

46 *Ibid.*; Scharf, *Hist. of Westchester*, I, 91, 92; Hufeland, Otto, *Westchester County During the American Revolution in 1775-1783*, p. 3.

patentees could similarly, if not so effectively, command a following to gain their political ends.⁴⁷ Thus, when in November 1769 John DeLancey tried to confer jury rights upon "sixty pound" holders of estates "for years or at will" within the manors of Cortlandt and Philipsborough, the bill purporting to do this was blocked by the power of landlords and of enfranchised freeholders. The following January, John Thomas' efforts to extend jury duty in the Justice's courts in Philipsborough to those holding similar non-freehold estates proved of no avail.⁴⁸ Furthermore, to prevent the growth of disloyalty to England in 1776, Frederick Philipse "conveined a large number of the Freeholders and Inhabitants of the Town of Westchester and prevailed upon them to enter an Association to preserve the peace and to support the legal Government . . ." ⁴⁹

These political ends were further served by the fact that short notice of election frequently made it difficult for voters to get to the polls.⁵⁰ When they got there, no secret ballot protected them from a watchful landlord. Under such circumstances there was little inclination to overcome the prevalent indifference to political matters.⁵¹ It is not strange that the

47 Livingston, *Livingstons of Livingston Manor*, pp. 181-6; Becker, *op. cit.*, p. 14, n. 58. He cites the defeat of R. R. Livingston in 1769 by Beekman and R. G. Livingston tenants as an illustration. But perhaps the aftermath of the 1766 disturbances accounted for the animus against R. R. Livingston. *D. A. B.*, XI, 320. *Vide infra*, pp. 158-59.

48 *Journal of the General Assembly, November 21, 1769 to January 27, 1770*, pp. 5, 6, 80-81. J. T. Scharf says Thomas' move purported to invest the Justice's courts with powers that belonged to the lord's court baron. *Hist. of Westchester*, I, 91-92. But I have no evidence other than hearsay to suggest that the lord's court baron functioned as late as 1770. *Vide supra*.

49 But "his laudable intentions were frustrated by the Superior Force of several parties . . ." American Loyalist Transcripts, XLI, 575-576.

50 Wm. Johnson to Rev. Dr. Auchmuty, Jan. 25, 1769, Johnson Mss, XVII, 51; *Doc. Hist. of N. Y.*, IV, 402-403.

51 Becker, C. L., *op. cit.*, pp. 14-15. J. T. Scharf points out that in 1777 Albany, Cumberland, Tryon, Dutchess, Ulster, and Westchester returned only 2,643 votes. *Hist. of Westchester*, I, 180-1, n. 2. He cites "Fragment of General Return of Votes Cast Throughout the State," Mss Papers, Vol.

great landlords viewed the selection of candidates as their special prerogative. It was perhaps in this spirit that Lewis Morris rejected the apologetic overtures and congratulations of William Forster who had just run unsuccessfully against him in 1733 as representative for Westchester. Judge Morris said that "*he believed that he (Forster) was put up on it against his Inclination; but that he was highly blamable . . .*"⁵²

The importance of landlord influence in New York politics can be gauged from the weight that their pocket boroughs bore in the New York Assembly. Usually, the majority leaders were furnished from the representatives of New York, Albany, Dutchess, and Westchester.⁵³ The cities and counties of New York and Albany had four and two representatives respectively. The other counties had two each. But besides these, three more votes came from the special jurisdictions of Schenectady, Rensselaerswyck, and Livingston Manor, and two more from the borough of Westchester and the manor of Cortlandt.⁵⁴ Thus one-third "of this dominant combination of votes came from what were practically pocket boroughs, under the control of great families, or business and family alliances, whose inter-

XXXVII, in the office of the Sec'y of State, Albany. The total population must have been over 95,000 with about 10,000 entitled to vote. *Cent. of Population Growth*, p. 182.

⁵² *New York Weekly Journal*, Nov. 5, 1733. Cf. Scharf, *Hist. of Westchester*, I, 166, n. 1; also Becker, *op. cit.*, pp. 15-16. Judge Morris had some cause for holding Forster at fault since the latter's supporters had tried to bar Quakers from supporting Morris by insisting on an oath. Scharf, *op. cit.*, p. 166.

⁵³ Spencer, C. W., "Sectional Aspects of New York Provincial Politics," *Political Science Quarterly*, XXX (1915), 423; Keys, *Cadwallader Colden*, p. 96.

⁵⁴ We have noted above the act of the N. Y. Assembly giving the right to elect Cortlandt representatives to the freeholders. But the influence of the Cortlandt heirs remained the same. Livingston, *The Livingstons of Livingston Manor*, p. 111. In April, 1775, the inhabitants of Van Rensselaer and Livingston Manors were forbidden to have a double vote by voting for the representative from Albany County as well as for their manorial delegate. *The Colonial Laws of N. Y.*, V, 874-875; Spaulding, *N. Y. in the Critical Period*, p. 59.

ests were both commercial and territorial.”⁵⁵ Referring to the manors of Livingston and Rensselaerswyck, Colden wrote, “it is in their Power to determine every Election in the County [of Albany] & may in effect Return all the five Members.”⁵⁶ Nor did the armed farmers who followed Prendergast in defiance of warrants, prison walls, proclamations, and troops believe that they shared power with the Livingstons, Philipses, Van Cortlandts, and Van Rensselaers.

The political pressure of the landlord was not always exerted in one direction. The landlord and small farmer interests, centered in Westchester, Richmond, Kings, and Queens Counties, forced New York City merchants to yield a monopoly of bolting and packing flour for export, and a projected land tax. But landlord representatives from Schenectady and the pocket boroughs of Rensselaerswyck, and Livingston and Cortlandt Manors, and from Dutchess and Westchester Counties made common cause with the spokesmen of New York City and Albany merchants against the small farmer delegates from the rural counties, forcing them to accept a compromise tax program. Under this compromise New York City paid only one-third of the total property tax, instead of a proposed forty-four per cent quota; and Albany fourteen, instead of nineteen per cent.⁵⁷

On the eve of the Revolution the great landlords had to face a double threat against the maintenance of their privileges.⁵⁸

⁵⁵ Spencer, “Sectional Aspects of N. Y. Politics,” *loc. cit.*, p. 423.

⁵⁶ Colden to Dartmouth, April 4, 1775, *Colden Letter Books*, II, 394.

⁵⁷ Edwards, George W., *New York as an Eighteenth Century Municipality, 1731-1776*, pp. 80-84; Spencer, *loc. cit.*, pp. 402-421; Harrington, *The N. Y. Merchant*, pp. 38-39, 279-280. The “Bolting Act” which destroyed the monopoly in 1694 left the manufacture of flour virtually unsupervised until 1750 when increasing pressure by merchants brought regulations in behalf of the export trade. The tax compromise was passed in 1746; the tax quotas for 1755 showed even greater tenderness for Albany County.

⁵⁸ R. R. Livingston, James Duane, and other influential men took part in anti-British movements to maintain their privileges against royal encroachment from above without losing them by popular encroachments from below Becker, *op. cit.*, pp. 17, 32, *et passim*.

Colden shrewdly observed how the power of the landlords stood athwart popular liberties on the one hand and royal prerogatives on the other.

People of the City and county (of Albany) view the privilege claimed by the Mannors as dangerous to them; and in my Opinion it may be very disadvantageous to Government that any one or two Families should be able to return so large a Proportion of the Members of our Assembly. The present Representatives of the Mannors have distinguished themselves in the opposition to Government, and were the warmest supporters of Congress.⁵⁹

The landlord did not hesitate to condemn the desire of the people for political recognition, a desire quite naturally stimulated by his own contest against royal encroachments.⁶⁰ The landlord's hatred of political or economic "levelling" reflected itself in his antipathy to New England ideas. Inspired by this sentiment Lewis Morris provided in his will that his son, Gouverneur, never be sent to Connecticut for his education, "...lest he should imbibe in his youth that low craft and cunning so incident to the People of that Colony..."⁶¹ No landlord, desirous of retaining his land, could afford to overlook the insistence upon absolute ownership, in the form of fee simple, which Connecticut emigrants carried with them to New York and Pennsylvania.⁶² Mrs. Grant's opinion of the "fierce republicans" and "levellers" from New Hampshire and Connecticut was equally severe.⁶³ She described them as squat-

59 Colden to Dartmouth, April 4, 1775, *Colden Letter Books*, II, 394; cf. Keys, *op. cit.*, p. 97.

60 Becker, *op. cit.*, p. 17, 32 *et passim*.

61 This continues, "...which is so interwoven in their Constitutions that all their art cannot disguise it from the World, though many of them under the sanctified garb of Religion, have endeavored to impose themselves on the World for honest men." Nov. 19, 1760, *Abstract of Wills on File in the Surrogate's Office, City of New York, 1665-1800*, New York Historical Society, *Collections* for 1892-1908, VI, 174.

62 Bailey, E. A., "Influence toward Radicalism in Connecticut 1754-1776," *Smith College Studies in History*, V (1920), 190.

63 Of course she was prejudiced by the fact that her father's (Duncan McVicar) 4,000 acre plot which was in the disputed New Hampshire Grant

ters "who came in without knocking; sat down without invitation; and lighted their pipe without ceremony; then talked of buying land; and, finally, began a discourse on politics, which would have done honor to Praise God Barbones [*sic*], or any of the members of his parliament."⁶⁴ As an argument against limiting the boundary of New York to twenty miles east of the Hudson, Colden noted that the New England governments were based upon "republican principles" whereas New York was "after the model of the English Constitution." "Can it then be good Policy," he queried, "to diminish the extent of Jurisdiction in His Majesty's Province of New York, to extend the power & influence of the others."⁶⁵ This argument of "independence and unbridled democracy" used by New York won over British opinion against the towns in the New Hampshire Grant region where New England influence, especially from Connecticut, bulked large.⁶⁶

As already demonstrated, landlord politics was reflected in the various enactments protecting the property rights of owners of real estate. It was also apparent in the popular animus against chancery courts. Landlords were careful to nurture amongst the public the illusion, fostered by Coke's *Institutes*, that the common law was the palladium of liberty, preserving immemorial rights of Englishmen against royal encroachment. They invoked this sentiment against chancery jurisdiction which was viewed as an instrumentality of the king's prerogative.⁶⁷ There were royal officers unkind enough to suggest

region, was squatted upon by New Hampshire grantees. Lieutenant McVicar became so disgusted with the squabbles that ensued that he left for Scotland in 1770. Hall, H., *Hist. of Vt.*, pp. 79-80.

64 Grant, *Memoirs of an American Lady*, pp. 147-148, 162, 199.

65 *Doc. Rel. to Col. N. Y.*, VII, 565.

66 *Vide infra*. Cf. Bailey, "Influences toward Radicalism in Conn.," *loc. cit.*, V, 186-7; Johnston, A., *Connecticut a Study of a Commonwealth Democracy*, p. 272.

67 Goebel, "The Courts and Law in Colonial New York," in Flick, *Hist. of N. Y.*, III, 27; Fowler, "Organization of the Supreme Court of Judicature of the Province of New York," *Albany Law Journal*, XIX, 310, 350-352, 390-391.

that the landlords were opposed to the chancery mainly because, if strengthened, it would become the medium for inquiring into their patents and for recovering the arrears in quit-rents due the Crown.⁶⁸

Even in the *cause célèbre* of *Forsey v. Cunningham*⁶⁹ the vested interests of the landlord were subtly intertwined with the defence of colonial liberties. Forsey had brought an action of trespass for assault and battery against Waddell Cunningham. The jury found for the plaintiff.⁷⁰ The attorney for the defendant applied to Colden as Lieutenant-Governor for a writ, which was granted on October 31, 1764, directing the chief justice to bring the proceedings before the governor and council.

The significance of this step lay in the fact that this was the first time an appeal had been attempted in a common law case in New York. The usual custom had been to obtain review by writ of error which permitted only errors of law on the record or in the bill of exception to come before the appellate court. An appeal, however, was not limited to mere errors of law that appeared on the record.⁷¹

The opposition to this move was vigorously pushed by the landed interests and lawyers. "The Proprietors of the great

68 Goebel, in Flick, *Hist. of N. Y.*, III, 27; Spencer, "The Land System of Colonial N. Y.," *Proceedings of the N. Y. Hist. Assoc.*, XVI, 161.

69 *Report of an Action of Assault, Battery and Wounding Tried in the Supreme Court... of New York... 1764, Thomas Forsey, Plaintiff and Waddell Cunningham, Defendant* (J. Holt, ed.; N. Y., 1764) (N. Y. P. L.); Dec. 14, 1765, *Journal of the Votes and Proceedings of the General Assembly of New York, 1743-1765*, pp. 803-806; and Goebel, *loc. cit.*, III, 38-40, which is an excellent brief discussion of the issues involved. They are also discussed in the *Colden Papers*, VII, 1-7; and the *Colden Letter Books*, I, 397, 407-416, 446-459, 461-463, 470; II, 72-74, 84; Keys, *op. cit.*, pp. 300-311, 318-319, 327-328; Fowler, "Organization of the Supreme Court...", *Albany Law Journal*, XIX, 432-433. The Hall of Records of New York City has some relevant parchment pieces like the judgment roll, Forsey's complaint, a notation on John Morin Scott's "April Term Dogget 1764," and a stay of proceedings.

70 Damages in excess of £1,000 were awarded. Goebel, *loc. cit.*, III, 39; Keys, *op. cit.*, p. 300.

71 Goebel, *loc. cit.*, III, 39.

Tracts of Land in this Province," wrote Colden, "have united strongly with the Lawyers as the surest support of their enormous & iniquitous claims, & thereby this faction is become the more formidable & dangerous to good Government."⁷² He believed that the reason for the opposition of the great proprietors was that, "They know what must be the consequence in suits depending between them and other the Kings Tenants, or the consequence of Informations of Intrusion, which may be justly brought against them &c in case the merits of the Cause be brought before the King & Council."⁷³ Furthermore, he argued that the rage against appeals to the crown was itself a demonstration of their necessity. "For it shews how much they think the admitting of Appeals to the King will weaken or destroy their Associations & Domination."⁷⁴

On January 11, 1765, the Council ruled that the King's instructions permitted only an appeal on writ of error.⁷⁵ Justice Horsmanden's opinion saw in Colden's move, despite the technical basis for his position,⁷⁶ a thrust at the jury system. In this he was seconded by the Assembly, which was under the domination of landlords. A resolution was passed on December 14, 1765 stating that "Trial by Jury is the Right of the Subject not only by the common Law, by Statute Law and the Laws of this Colony, but essential to the Safety of their Lives, Liberty, and Property."⁷⁷ A reprimand was sent to Colden and compliments dispatched to the justices of the supreme court. Amidst

⁷² Colden to Halifax, February 22, 1765, *Colden Letter Books*, I, 470. See also *ibid.*, I, 397; II, 74.

⁷³ Colden to the Lords of Trade, Nov. 7, 1764, *Colden Letter Books*, I, 397.

⁷⁴ *Colden Letter Books*, II, 73; also *ibid.*, I, 397, 450-1.

⁷⁵ *Forsey v. Cunningham* (J. Holt, ed.), pp. 29 *et seq.*; Goebel, *loc. cit.*, pp. 39-40; Keys, *op. cit.*, pp. 302-303.

⁷⁶ Colden had a technical basis for his action in the omission of the words "in case of error only", from article 32 of the king's instructions. These had been previously inserted and as a matter of fact believed to be understood by the attorney and solicitors general of England. To resolve all doubt, Sir Henry Moore's instructions contained the old words. Goebel, *loc. cit.*, pp. 39-40. Colden presents his case rather cogently in *Colden Papers*, VII, 1-7.

⁷⁷ *Journal of the General Assembly of N. Y., 1743-1765*, p. 806.

all this fanfare on the liberties of Englishmen great landlords could take comfort in the security of their property rights.⁷⁸

The great number of fees and delays involved in acquiring and defending land titles made it difficult for poor men to become or remain possessed of even small holdings. The procedure for getting a patent to land required many expenses.⁷⁹ The petition for a license to purchase from the Indians brought twenty shillings to the Governor, six shillings to the Clerk of the Council, one shilling six pence for reading it to the Council, and six pence for filing it. After Indian title had been extinguished, there was a six shilling fee for the application for the warrant of survey. Fees to the Surveyor-General were fifteen shillings if the tract was under one hundred acres and ten shillings for each additional day required; three shillings for his assistant. When the warrant was issued for the Attorney-General to draw the patent, the Clerk of the Council got three shillings; the Attorney-General, ten shillings; the Secretary of the province, thirty shillings for grants under a thousand acres, and thirty-six shillings if more; and the Governor got twelve shillings for every one hundred acres or ten shillings per hundred for a large grant. In addition there were quit-rents of two shillings six pence per hundred acres which, though small, were not successfully collected.⁸⁰ The very papers involved, written in long hand on parchment, were very expensive.

78 Cunningham's attorney, Robert Ross Waddel petitioned on Jan. 22, 1765, to have the King review the Council's ruling of January 11, 1765. After deliberation by the British authorities the Governor of New York was ordered to allow the appeal and remit the records by order of the King, July 26, 1765. Waddel's petition to the Supreme Court to admit the appeal was thrown out on the technical ground that his letter of attorney from Cunningham was insufficient. Furthermore the Court declared that it had no authority to send up a record from the Court of Appeals over which it had no jurisdiction. *Cal. of Hist. Mss*, II, 752, 755, 757; Fowler, *loc. cit.*, XIX, 433.

79 These are described in Higgins, *Expansion in N. Y.*, pp. 29-30.

80 Act of May 24, 1709, *Colonial Laws of N. Y.*, I, 638-653. See above for the fees collected by colonial officials for land grants. Patent Books, V, 357; VI, 190, 192, 454; VII, 1; *Doc. Rel. to Col. N. Y.*, IV, 419; V, 358, 362-63, 365-66, 368-70, 499, 848; Higgins, *op. cit.*, pp. 30-31.

After a valid title had been acquired it was costly to maintain ownership. If even John Watts, seeking some vacant lands among Indian and rival claims, could write, ". . . the One would take your Scalp, the other your Estate in Law Suits,"⁸¹ small farmers could hardly be expected to withstand the numerous law suits against their lands. Colden sometimes felt called upon to protect "really poor industrious Farmers, not able to contend with rich & powerful Men."⁸² To the man of small means, the courts were virtually barred by an onerous catalogue of fees⁸³—for the judges, attorneys, clerks, sheriffs, witnesses, juries, and bell-ringers. The expenses for defending the upper patent for Roger Morris, Philip Philipse, and Beverly Robinson from October 2, 1753 to December 5, 1766 totalled £2081, eighteen shillings, ten pence.⁸⁴ The items included court fees in the Nimham and Prendergast affairs; fees for copies of papers involved; for transporting judges, lawyers, witnesses, juries; for sheriffs and "sundry expenses" for bodyguards, militia, army officers, and soldiers.

To the expenses were added the delays of litigation involving land. "In general," remarked Colden, "all the Lawyers unite in promoting Contention, prolonging Suits & encreasing the Expence of obtaining Justice. Every artifice & chicanery in the Law had been so much connived at, or rather encouraged that honest Men who are not of affluent fortunes are deterr'd from defending their Rights or seeking Justice."⁸⁵ Whatever truth

⁸¹ *Letter Book of John Watts . . . 1762-1765*, p. 318; Alexander, in Flick, *Hist. of N. Y.*, III, 154-5.

⁸² Colden to Lords of Trade, Nov., 1764, *Colden Letter Books*, I, 403.

⁸³ For court fees in 1691, *Facsimile of the Bradford Laws of N. Y.*, pp. 1-7; for attorney's fees in 1768, Goebel, in Flick, *Hist. of N. Y.*, III, opp. p. 38 where there is a transcript of a page of "An Ordinance for requesting and establishing the fees to be taken by officers of the Supreme Court . . ." a rare pamphlet in the library of the Association of the Bar of New York County. Cf. *Colonial Laws of New York*, I, 641-650.

⁸⁴ Philipse-Gouverneur Land Titles, no. 20. This folder contains an itemized account in great detail.

⁸⁵ Colden to Board of Trade, Dec. 6, 1765, *Colden Letter Books*, II, 70.

there was in this statement, delays were certainly encouraged by the judicial procedure in land cases.

Title to land was generally determined through an ejectment action which was amongst the most complicated of all legal actions.⁸⁶ Through ejectments many disgruntled "trouble-makers" who subsequently actively led small farmer uprisings were ousted by the Livingstons, Philipses, and Van Rensselaers.⁸⁷ This action was generally reserved for the Supreme Court.⁸⁸ When in 1695 the Courts of Common Pleas were given the right to try titles, a governor remarked that it was "a thing unpresidented for the county justices to have the power of trying titles of land where the construction of deeds and writings is necessary and requires more skill in law than any of them can pretend to."⁸⁹ Trials might be held by justices of the supreme court who were authorized to "goe the circuit" once a year in each county. Liberal allowance was made for the trial of land cases *en banc*.⁹⁰ Thus in *Jackson ex dem Terboss*

86 Blackstone, *Commentaries on the Laws of England*, III, 199-206; opp. pp. vii-xii; Holdsworth, W. S., *A History of English Law* (9 vols., London, 1931), VIII, 3-23; Morris, R. B., *Select Cases of the Mayor's Court of New York City, 1674-1784*, pp. 229-235; Sedgwick, A. G. and Wait, F. S., "The History of the Action of Ejectment in England and the United States," *Select Essays in Anglo-American Legal History*, III, 611-645. There are many examples of parchment judgment rolls in colonial ejectment proceedings in the Hall of Records of New York City. These may be recognized by the fictitious names in the titles, like *James Jackson ex dem v. John Stiles*, *John Denn ex dem v. Richard Fenn*, and *Peter Quiet ex dem v. Robert Stout*. The names of the real parties were not always included, though those of the real defendants usually were appended.

87 See below, p. 119, n. 67; pp. 132-5, nn. 4 *et seq.*, for parchment rolls.

88 *Colonial Laws of N. Y.*, I, 226-231, 303-308; Fowler, *Facsimile of the Bradford Laws of N. Y.*, pp. 2-6, 64-68. The judicial system remained basically in this form which Bellomont, Cornbury, and others continued down to the Revolution. Fowler, in *Albany Law Journal*, XIX, 149-152, 189, 192, 209-212, 229-232, 309-311, 349-352, 389-392, 430-433, 489-492; Goebel, in Flick, *Hist. of N. Y.*, III, 25-6.

89 Cited in Goebel, *loc. cit.*, III, 25-26.

90 November 11, 1692, *Colonial Laws of N. Y.*, I, 303-308; *Facsimile of the Bradford Laws of N. Y.*, pp. 64-68. Two justices of the peace assisted him. In this way the English *nisi prius* system was introduced. Goebel, *loc. cit.*, III, 23, 25.

v. *DuBois* the court granted a trial before a full bench, ruling:

. . . it appearing to the Court that an impartial Jury cannot be had in the County of Ulster . . . and that the Cause will require great examination both on account of the value of the Lands in Controversy and the Length and difficulty of the trial; and because from the peculiar state of this country to which the Practice of this Court had been adapted for the advancement of Justice, tryals at Barr have been frequently allowed upon Reasons not so urgent as those now offered; . . . ⁹¹

Even the juries were apt to be ill-disposed towards the tenant farmer seeking justice against landowners since the jurymen were generally required to be freeholders of estates valued at sixty pounds or, in New York City and Albany, possessed of a personal estate of the same value.⁹²

Apparently Colden's charges of landlord domination of the political structure were not without substance. Furthermore, the legal incidents of the land system lent their weight toward sustaining a grossly inequitable distribution of land which frequently had been acquired under fraudulent circumstances. These conditions boded ill for the future stability of the relations of colonial small farmers and great landlords. They blew up the storm that raged violently through the Hudson Valley in the decades before the Revolution.

91 Ms Min. Book of Sup. Ct., 1764-1766, pp. 240-241 (New York Hall of Records).

92 It was so required from 1741 onward. *Colonial Laws of New York*, III, 185, 599. For earlier qualifications of "ten acre" freeholds or "fifty pound" personal estates from 1699 to 1701, 1710 to 1712, 1719 to 1733, see *ibid.*, I, 387, 708, 1021; II, 345. Cf. Morris, *Select Cases of the Mayor's Court of New York City 1674-1784*, p. 31.

CHAPTER[®] IV

AGRARIAN DISTURBANCES, 1711-1760s

THE first serious small farmer disturbances in eighteenth-century New York occurred amongst the German Palatines, who had come to New York after many vicissitudes in two distinct migrations.¹ In 1708 the first group sought refuge in England from the devastation of war, the burden of heavy taxation, the ravages of a severe winter, and religious quarrels which harassed their native land. From England about fifty of these were shunted to Quassaick Creek, a little tributary of the Hudson near the present site of Newburgh, to which high pressure advertising and the cooperation of the British impelled them.² The British government saw in the migration to New York an opportunity to serve both the cause of benevolence and its own self-interest. It hoped to solve a naval store problem and relieve itself of the burden of maintaining the Palatines in England.³ It wanted to assist New York in developing natural resources with which to pay for imported British manufactures.⁴ At the same time these sturdy yeomen would furnish the manpower to protect a vulnerable frontier.⁵ The first group of Palatines developed Newburgh, to which they were granted a patent in

1 For detailed account see Knittle, *The Early Eighteenth Century Palatine Emigration*, chaps. I-III.

2 Higgins, *Expansion in N. Y.*, p. 47. They accompanied Gov. Lovelace and settled on part of the Evans' grant which had been vacated. *Doc. Rel. to Col. N. Y.*, V, 52-53, 67.

3 Knittle, *op. cit.*, chap. V, esp. pp. 133-134; Lord, Eleanor L., *Industrial Experiments in British North America*, pp. 1-41.

4 Knittle, *op. cit.*, pp. 118-9. Bellomont dwelt on the resources in New York and the need for labor. *Doc. Rel. to Col. N. Y.*, IV, 501, 587, 707. See also *ibid.*, V, 616.

5 *Calendar of State Papers, Colonial Series, America and West Indies, 1697-8*, p. viii. Estimates vary, but the largest number appear to be husbandmen and vinedressers, though there were many artisans. Brink, B. M., "The Palatine Settlements in New York," *N. Y. State Hist. Assoc., Proceedings*, XI (1912), 138.

1719. But they soon sold this to Alexander Colden and fifteen others and removed to western frontiers.⁶

The second migration accompanied Governor Hunter from England and arrived at New York in the summer of 1710 with about 2,500 surviving the trip. Although the Board of Trade had suggested the vacated Evans tract for their location, the choice of a site was left entirely to the discretion of Governor Hunter. A few days before the Palatines sailed from England, they had signed a covenant, the terms of which had been suggested by the Board of Trade.⁷ Under this covenant the Palatines, in consideration of large sums advanced by the government for transporting, maintaining, and settling them, agreed to reside on lands assigned to them and to refrain from leaving them without permission. They promised to produce naval stores. When the Crown had been reimbursed completely, they were to receive forty acres free from all taxes, quit-rents, or other services for seven years.

These Palatines found grievances almost from the first day of their landing. To the death toll of the trans-Atlantic voyage was added that of the encampment on Nutten (Governor's) Island. Hunter reported on July 24, 1710 that 470 had died up to that date.⁸ As a result, many children were left orphans. These were apprenticed by Hunter.⁹ Unfortunately, the children of living parents were also apprenticed, leaving many grief-stricken parents who never forgot to list this as one of their chief grievances.¹⁰

6 Patent Books, VIII, 333; *Doc. Hist. of N. Y.*, III, 572-580, 595; Council Minutes, XI, 89, 171, 247, 266, 509, 518; Land Papers, V, 142; VI, 39, 57, 188.

7 *Doc. Rel. to Col. N. Y.*, V, 87-88, 117-120, 121, 122, 163; *Doc. Hist. of N. Y.*, III, 637-643. Hunter had suggested their use for naval stores. *Doc. Rel. to Col. N. Y.*, V, 112-3.

8 *Ibid.*, V, 167; *Doc. Hist. of N. Y.*, III, 559.

9 Seventy-four were thus apprenticed including John Peter Zenger. *Ibid.*, III, 553, 566; Knittle, *op. cit.*, p. 149.

10 For example, John Conrad Weiser lost his son George Frederick. The petition of 1720 lists this as one of the chief grievances. *Ibid.*, p. 149.

A second complaint was that Governor Hunter refused to send them to Schoharie. The Palatines felt cheated of a supposed grant to this land. According to one of their leaders, Conrad Weiser, certain Mohawk chiefs visiting London with Peter Schuyler were so touched by their abject condition in the encampment that they offered a tract of land to the Queen for the use of the Palatines.¹¹ Yet, the fact of the matter was that the Palatines were on board ships off the English coast from about December 25, 1709 to April 10, 1710; thus, the Indians, who arrived in April, 1710, could not possibly have seen them in their encampment.¹² Furthermore, the Indian gift of Schoharie was made to the Queen at Fort Albany, August 22, 1710 for Christian settlements,¹³ perhaps more in fear that Hunter would take it away than in compassion for the Palatines. Finally, Hunter was certainly under no obligation to settle them there, since the matter had been left to his discretion.

Yet, despite these facts, the Palatines persisted in their delusion. They refused to believe Hunter's explanation that Schoharie was too difficult to defend and had insufficient pitch pine.¹⁴

11 *Weiser Diary* in Brown, J. H., "The Early German Settlers along the Hudson and Schoharie," *Americana*, VIII (1913), 797. This tradition was repeated by many. For example, Ellsworth, W. W., "The Palatines in the Mohawk Valley," N. Y. State Hist. Assoc., *Proceedings*, XIV (1915), 295-6.

12 Knittle, *op. cit.*, p. 151.

13 Hendrick, the only genuine Mohawk sachem on the trip to England, said to Hunter at Albany, "We are told that the great queen of Great Britain had sent a considerable Number of People with your Excy to settle upon the Land called Skohere, which was a great Surprise to us and we were much Disatisfyd at the news, in Regard the Land belongs to us... Nevertheless Since your Excellcy has been pleased to desire the said Land for Christian Settlements, we are willing and do now Surrender... to the Queen... for Ever all that tract of Land Called Skohere..." "Propositions made by the Chiefs to the three Tribes of the Maquas Indians... to Gov. Hunter of N. Y....," August 22, 1710, Miscellaneous Mss on Indian Affairs (N. Y. Hist. Soc. Library).

14 Grievances of the Palatines in New York, Aug. 20, 1722, *Doc. Hist. of N. Y.*, III, 709-710. Hunter to Board of Trade, July 24, 1710, *ibid.*, III, 559-560. W. A. Knittle believes these arguments valid. *Early Eighteenth Century Palatine Emigration*, pp. 153-155.

They felt aggrieved when Hunter selected a tract of Crown land nearer New York City, and when he purchased adjoining tracts from Robert Livingston and Thomas Fullerton.¹⁵ Reluctantly the bulk of them moved to the area selected for them and began the arduous task of clearing and building. Despite their resentment, seven villages with a population of 1,874 had been established by June, 1711.¹⁶

Against Robert Livingston the Palatines were especially incensed. Livingston was certainly not one to overlook the great economic advantages that neighboring Palatine settlements would provide. Even if he did not influence Hunter's agent to advise against Schoharie for the Palatine settlement,¹⁷ he certainly exploited his friendship with the Governor to the fullest possible extent,¹⁸ for how else could Hunter have purchased 6,000 acres from Livingston for the Palatines when the patents from Dongan had called for only 2,600 acres? For this land and the liberty of using the nearby pitch pine on Livingston's tract, Hunter paid Livingston £400 in colonial currency, which exceeded the consideration that had been paid for the 160,000 acres of Livingston Manor.¹⁹

15 6,300 acres of Crown land about ninety-two miles from New York City; 6,000 acres from Robert Livingston; and 800 acres from T. Fullerton. *Doc. Rel. to Col. N. Y.*, V, 290; *Doc. Hist. of N. Y.*, III, 644, 661.

16 These were Hunterstown, Queensbury, Annsbury, Haysbury, Elizabeth Town, George Town, and New Town. *Ibid.*, III, 668. A large number remained in New York City. Knittle, W. A., *op. cit.*, pp. 158-9.

17 Knittle exonerates Bridger from any complicity with Livingston by showing that Schoharie really did not have pitch pine in abundance. *Ibid.*, pp. 153-4. But what one fails to see is why Livingston's land was selected when there was undoubtedly better land for this purpose. Cornbury was suspicious of Livingston for this reason. *Doc. Hist. of N. Y.*, III, 656.

18 Knittle, W. A., *op. cit.*, pp. 156-157.

19 *Doc. Hist. of N. Y.*, III, 616, 621, 622, 624, 644. On Oct. 20, 1714, the deputy Surveyor found that Livingston Manor contained 160,240 acres according to its metes and bounds despite the fact that the deeds stated a total of 2,600 acres. The larger acreage and the right to send a manorial representative to the Assembly were included in the confirmatory grant by Hunter in 1715. *Ibid.*, III, 644, 690-702, map opp. p. 690.

Cornbury harbored a just suspicion of Livingston when he wrote to Lord Dartmouth, "... if he can get the Victualling of those Palatines who are so conveniently posted for his purpose, he will make a very good addition to his Estate . . ." ²⁰ Livingston was under contract to sell one-third of a loaf of bread and one quart of ship's beer to each person daily for six months. In fact he sold tools, tentpoles, and other necessities. Commissioner Cast frequently complained that Livingston's food was inferior in quality and short-weighted. Serving as Inspector of the Palatines, Livingston was also a beneficiary of their contracts for the facilitation of which he even made loans. ²¹

The Palatines intensely disliked the military character of the administration. This was made even more stringent after they showed their resentment in May, 1711. They were goaded to their work by the threat of punishment despite their abhorrence of working in gangs under military supervision. They were further oppressed by the diminution of their subsistence allowance through miscellaneous expenses. ²²

In May, 1711, the discontent reached a boiling point, of which Cast had forewarned Hunter. ²³ The Palatines insisted that they had been cheated of the better Schoharie land. Resolving neither to make pitch and tar nor to remain where they were, they threatened to remove to Schoharie by force. Meanwhile, they forced the surveyors to desist from laying out more lots. While holding a parley with their representatives, Hunter sent for a detachment of sixty troops from Albany to meet him at Livingston Manor. At this meeting he reprimanded the Palatine deputies. At first they appeared apologetic, but the next day they became defiant when a body of three to four hundred of their kinsmen appeared "to pay their compliment" to Hunter. The Palatine spokesmen announced "that they had rather lose their

20 March 8, 1711, *Doc. Hist. of N. Y.*, III, 656.

21 *Ibid.*, III, 653-5, 660, 674; Palatine debts for wheat, March, 1719, Redmond-Livingston Mss; for tools, etc., N. Y. Colonial Mss, LVII, 124a.

22 *Doc. Hist. of N. Y.*, III, 658-9, 669, 670, 671, 678.

23 Cast to Hunter, March 27, 1711. *Ibid.*, III, 658-9.

lives immediately than remain where they are, that they are cheated by the contract, it not being the same that was read to them in Engd. . . . to be forced by another contract to remain on these lands all their lives, and work for her Majesty for the ships use, that they will never doe, . . ." ²⁴

Reinforced by seventy more troops, Hunter disarmed the villages and was temporarily able to secure the outward appearance of submission.²⁵ Determined to enforce obedience, he established a court over them on June 12, 1711. Troops were dispatched from time to time to compel the Palatines to remain in their towns and to continue to work. But these efforts proved vain.²⁶ The cessation of financial support from England, after the promise of the tar pitch experiment had failed to materialize, and the exhaustion of Hunter's credit forced him to permit an exodus which continued for five years.²⁷ The cold and hunger of the bitter winter of 1712-1713 drove some to Pennsylvania and New Jersey, others to Rhinebeck, New York, and New York City, and many to Schoharie.²⁸ Some established themselves on Livingston Manor itself where they fell heavily in Livingston's debt.²⁹ Those that remained were heartened in 1724 by a report favoring the issuance of letters patent in their behalf.³⁰

The oppression of the Palatines followed them to Schoharie. They had sent deputies to make arrangements with the Indians

²⁴ Hunter to Board of Trade, May 7, 1711, *ibid.*, III, 661-2. Secretary Clarke to Board of Trade, May 30, 1711, *ibid.*, III, 662-3, 664.

²⁵ *Ibid.*, III, 665-6, 667.

²⁶ *Ibid.*, III, 669, 675, 678, 682. Earl, S., "The Palatines and their Settlement in the Valley of the Upper Mohawk," *Transactions of the Oneida Historical Society* (1881), pp. 38-39.

²⁷ They were allowed to go anywhere in New York and New Jersey but only after securing a ticket of leave. *Doc. Hist. of N. Y.*, III, 683-4.

²⁸ Knittle, *op. cit.*, p. 189.

²⁹ Ms Lists of Palatine Debts, Dec. 26, 1718, Feb. 21, 1726, Dec. 4, 1729, etc., Redmond-Livingston Mss. Cf. Huntting, *op. cit.*, p. 133; *Calendar of State Papers, Colonial Series, American and West Indies 1720-1721*, p. 180.

³⁰ Petition of Jacob Scharp and Christophel Hagadorn, June 13, 1724 and Report in Favor of Issuing Letters Patent to the Palatines of Germantown, *Doc. Hist. of N. Y.*, III, 720-1, 725-6; *Doc. Rel. to Col. N. Y.*, V, 366.

who were easily persuaded to sell land, the title to which they had sold on two previous occasions.³¹ Upon the return of the deputies, a road was cut through the snow-laden forest, and fifty families hastened to Schoharie despite the many prohibitions of Governor Hunter. Having survived the rigors of a severe winter, they were joined in March, 1713, by 150 families who traveled through the deep snow against the express order of the Governor.³² Here they built their villages anew.³³

No sooner were conditions for the Palatines beginning to improve than rival claimants began to harry them. In the summer of 1714 Nicholas Bayard appeared and offered to give deeds to every householder who would describe the boundaries of the land held.³⁴ Without authority he held himself forth as a Queen's agent. He probably wished to strengthen his grandfather's vacated claim, which he had revived.³⁵ Mistaking him for Hunter's representative, the Palatines angrily set upon him, and besieged him in John George Smith's house. Bayard barely escaped to Schenectady, where he unsuccessfully renewed his offer.

Meanwhile Adam Vrooman, in August 1714, received a patent from Hunter for six hundred acres on the west side of the river,³⁶ and five Albany land speculators, Myndert Schuyler, Peter Van Brugh, Robert Livingston, Jr., John Schuyler, and Peter Wileman, purchased from Hunter in November 1714 the

31 To Nicholas Bayard and Governor Hunter. Cf. *Weiser Diary*, p. 15, *loc. cit.*, VIII, 798; Earl, *loc. cit.*, pp. 40-41.

32 *Doc. Hist. of N. Y.*, III, 710-711; *Doc. Rel. to Col. N. Y.*, V, 347, 364.

33 Kniskerndorf, Gerlachs Dorf, Fuchsendorf, Schmidsdorf, Brunnendorf, Hartsmansdorf, and Weiserdorf. Knittle, *op. cit.*, pp. 193-5.

34 *Ibid.*, pp. 200-201.

35 In 1710 he had petitioned that either the changes and fees be refunded or the former grant be confirmed. *Cal. of N. Y. Col. Land Papers*, p. 97.

36 *Doc. Hist. of N. Y.*, III, 711; Patent Books, VIII, 92; Land Papers, VI, 12, 13, 14, 34, 36, 37, 64; Council Minutes, XI, 235, 245, 267. He had gotten his first Indian deed in 1711 and another in 1714. Higgins, *op. cit.*, p. 52, n. 32.

patent to ten thousand acres.³⁷ These claimants called upon the Palatines in 1715 to purchase, lease, or vacate the land, offering the land free from all rent for ten years, and after that at a very moderate rent.³⁸ But the Palatines responded with violence. They tore up Vrooman's fences, pulled down the walls of his home, and dragged his son from a wagon and beat him.³⁹ When an Albany sheriff tried to serve a warrant for the arrest of John Conrad Weiser, he was dragged through pig sties, ridden on a rail, and beaten until two ribs were broken.⁴⁰

In 1717 Hunter ordered Weiser and three men from each village to appear before him. When they appeared he informed them that he was expecting orders to remove the Palatines unless they came to an agreement with the patentees. He promised assessors to evaluate improvements; but the promise was never kept. Despite their appeals, he ordered the Palatines to desist from sowing.⁴¹ But the Palatines did not heed this order. They sent three representatives to appeal to the Crown.⁴² Their petitions in 1720 begged that the 160 families who had developed Schoharie be granted free possession of the land.⁴³ But by this time Hunter had appeared in person to block their proposals with the counter suggestion that they be removed to other lands on the frontier.⁴⁴

This suggestion was adopted against the wishes of the Palatines. Governor Burnet, the successor of Hunter, was ordered

37 Known as Huntersfield, Schuyler or Schoharie patent. Patent Books, VIII, 74; Land Papers, VI, 24, 25, 26, 78, 79, 80; Council Minutes, XI, 239, 243, 245. Two others were added later, Lewis Morris, Jr., and Andries Coeyman. Knittle, *op. cit.*, p. 202.

38 *Ecclesiastical Records of the State of New York*, III, 2146; *Doc. Rel. to Col. N. Y.*, V, 552-553.

39 A. Vrooman to Hunter, June 9 and July 9, 1715, *Doc. Hist. of N. Y.*, III, 687.

40 *Ibid.*, III, 688; Knittle, *op. cit.*, p. 203.

41 *Doc. Hist. of N. Y.*, III, 713; *Doc. Rel. to Col. N. Y.*, V, 553-555; Higgins, *op. cit.*, pp. 53-54.

42 John Conrad Weiser, William Schefs, Gerhart Walrauth.

43 *Doc. Hist. of N. Y.*, III, 707-714; *Doc. Rel. to Col. N. Y.*, V, 554-555.

44 Dellius' tract, for example, *ibid.*, V, 552-561.

to investigate and settle the Palatines on suitable lands.⁴⁵ The result was another diaspora; some Palatines went to Stone Arabia and Burnettsfield patents; others migrated to Pennsylvania; and about three hundred remained after coming to terms with the Huntersfield proprietors. Later some settled on the Canajoharie tract.⁴⁶ By 1740 the rest of Schoharie had been staked out by patents to great land speculators among whom were Lewis Morris, Andries Coeyman, George Clark, William Corry, James DeLancey, and William Cosby.⁴⁷

Several decades after the Palatine troubles had subsided, small farmer resentment against Robert Livingston, Jr., and the Van Rensselaers flared into open violence in the eastern border warfare of the '50s.⁴⁸ The controversy resembled somewhat the Jersey yeomen's uprising against the proprietors which broke out sporadically from 1745 to 1754.⁴⁹ The coals that fed the flames were of many brands. Basic was the hatred inspired by the tenant's insecurity of tenure and by his obligations to the landlord. The tenant's disposition to fulfil these obligations was by no means encouraged by the circumstances under which these landlords increased their holdings and by the great powers they had over the life of the tenant. It is not strange that tenants thus oppressed should avail themselves of the security of title

45 *Ibid.*, V, 582.

46 *Ibid.*, V, 582, 656; VII, 850; VIII, 70, 78, 92, 94; *Weiser Diary*, p. 45, *loc. cit.*, VIII, 801; Sutherland, *Population Distribution in Col. Am.*, p. 87.

47 Patent Books, VIII, 144; IX, 54, 287, 296; XI, 154, 253, 395, 513, 528; XII, 68.

48 For an excellent account of these border wars, see Pope, "The Western Boundary of Massachusetts, a Study of Indian and Colonial History," *loc. cit.*, I, 27-85. Cf. Handlin, "The Eastern Frontier of New York," *New York History*, XVIII, 50-75.

49 These riots spread over a wide area in eastern New Jersey involving as many as one third of the farmers of some counties. The land situation, conflicting titles and opposition to quit-rents were prominent amongst the causes of violent opposition which took the form of jail deliveries and of preventing courts from sitting. Fisher, E. J., *New Jersey as a Royal Province 1738 to 1776*, chaps. VI-VII; *N. Y. Weekly Post-Boy*, June 9, 1746; *New Jersey Archives*, XII, 308, 309; VI, 206-15, 245, 292-96.

and lower rents offered by rival claimants. These more favorable terms were proffered to win popular support for the new claims. Rival land speculators derived their titles from the overlapping boundaries of Massachusetts and New York. Furthermore, Indian claims, exhumed by enterprising speculators, produced many disturbances where ancient frauds had failed to extinguish such rights.

The history of the eastern boundary of New York province is turbulent and tortuous.⁵⁰ Involving as it did the rights of five political entities, the history of each part has its own development. That which separated New York and New Hampshire, or the part that later became Vermont, was the scene of the bitter New Hampshire Grant controversy. The line between New York and Connecticut was drawn rather early without the violence that accompanied the running of the other lines.⁵¹ But the determination of the line between Massachusetts and New York was intimately related with the small farmer agitation that disturbed the peace of this region for more than two decades before the Revolution.

The boundary controversy between New York and Massachusetts sprang from the terms of their respective charters. The grant to the Duke of York conferred "all the land from the

⁵⁰ *Report of the Regents of the University on the Boundaries of the State of N. Y.*; *Doct. Hist. of N. Y.*, Vol. IV; Paullin, C. O. and Wright, J. K., *Atlas of the Historical Geography of the United States*, Plates 97A, 97B, and 97E; pp. 72-73, 75-76.

⁵¹ *Report of the Regents on Boundaries of N. Y.*, I, 58-62. Lines were run in 1725 and 1731. Colden says this was about twenty-one miles from the Hudson though the distance varied at different points, and was closer to twenty miles. *Ibid.*, I, 230-231 *et passim*; *Doc. Rel. to Col. N. Y.*, IV, 628-630. That even this border was not entirely free from disturbances is apparent from Governor Cosby's letter to Governor Talcott, April 21, 1733, in which he complained that some people from Ridgefield had crossed into Equivalent Lands surrendered by Connecticut "...and in a riotous and tumultuous manner, pulled down and burnt a dwelling house, and cut down, and destroyed timber and fences and still persevering in their evil dispositions, threaten to commit the like again." *The Talcott Papers, Correspondence, and Documents (Chiefly Official) During Joseph Talcott's Government of the Colony of Connecticut, 1724-41*, I, 276-277.

west side of Connecticut River to the East side of De la Ware Bay." This was confirmed in 1674 and 1676. No New England charter appeared to overlap the eastern New York border until that of 1691, which extended Massachusetts "toward the South Sea, or Westward, as far as our colonies of Rhode-Island, Connecticut, and the Narraganset country."⁵² The New York lawyers piled up mountains of arguments to show that their border was the western shore of the Connecticut River; the Massachusetts attorneys, that theirs was the Connecticut line extended northward.⁵³ But before the legal rationalizations were put forth, speculators and settlers staked their claims to the fertile border lands.

Amongst the greatest engrossers of land, who traced their title through New York claims, were the Van Rensselaers and the Livingstons. They had acquired these without extinguishing Indian titles, particularly those of the Stockbridge Indians. This circumstance afforded to rival speculators an opportunity to dangle cheap Massachusetts and Indian deeds before the eyes of oppressed older tenants or land-hungry new ones. By the third decade, Massachusetts speculators and settlers were laying out their townships in the Housatonic Valley.⁵⁴ A committee under John Stoddard and Ebenezer Pomeroy of Northampton, and John Ashley of Westfield was formed to divide, grant, and settle lots after Indian title had been extinguished to the present sites of Sheffield, Egremont, Great Barrington, West Stockbridge, and the environs.⁵⁵ Sporadic grants to squatters were made by the General Court until June, 1751, when an attempt

⁵² Copied from Original Parchment in New York State Library in *Colonial Laws of N. Y.*, I, 1; and *Report of the Regents on Boundaries of N. Y.*, I, 10, 22, 53.

⁵³ Fortunately it is unnecessary to determine which side had the better right. Anyone plodding through the tortuous legal maze realizes how difficult this would be. For a recent decision upholding the extension of colonial New York, *vis a vis* Vermont, to the Connecticut River, see 289 U. S. 593 (1932).

⁵⁴ Pope, *loc. cit.*, pp. 55-58; Holland, J. G., *History of Western Massachusetts*, I, 163-164, 169-171.

⁵⁵ Holland, *op. cit.*, I, 163-4.

was made to systematize them through the appointment of a committee to survey the unappropriated lands west of the Connecticut River.⁵⁶

It was inevitable that these efforts should come into conflict with those of New York speculators and settlers. In 1705 the Westenhook patentees had received from Cornbury a grant which included a large part of Berkshire County and even Connecticut.⁵⁷ Their complaints to Governor Burnet, who corresponded with Governor Belcher of Massachusetts, brought in 1727 a temporary quietus to the activities of the Massachusetts committee.⁵⁸ But a new committee in 1733 continued the functions of the previous one. In 1739 Governor Belcher found it necessary to warn Lieutenant-Governor Clarke of New York to settle the boundary controversy or be held responsible for the consequences.⁵⁹ Clarke appealed to the Lords of Trade and was assured that Massachusetts had acted too hastily. However he was urged to make an amicable arrangement.⁶⁰ In 1740 Massachusetts' appointment of a boundary commission went unapproved by New York.⁶¹ Meanwhile, the Massachusetts settling commission had brought in settlers for its towns.

More significant, however, were the clashes with Robert Livingston, Jr., in the sixth decade of the eighteenth century. For these more directly involved small farmer dissatisfaction with tenure and rent. In the fall of 1751, many tenants of Robert Livingston, Jr., not only refused to pay their rents, but also showed their determination to continue their occupation not as tenants but as owners under the authority of grants to be se-

⁵⁶ Handlin, *loc. cit.*, p. 54.

⁵⁷ To Peter Schuyler, Derrick Wessels, *et al.* March 6, 1705, Taylor, C. J., *History of Great Barrington*, pp. 2-3.

⁵⁸ *Report of the Regents on Boundaries of N. Y.*, II, 90; Pope, *loc. cit.*, pp. 56-57; Taylor, *op. cit.*, pp. 17, 20, 25, 102.

⁵⁹ *Journal of the Votes and Proceedings of the General Assembly of the Colony of New York 1691-1743*, pp. 762-763.

⁶⁰ *Doc. Rel. to Col. N. Y.*, VI, 143, 149.

⁶¹ *Council Minutes*, XIX, 67.

cured from the government of Massachusetts.⁶² Their leaders appeared to be Michael Hallenbeck, a Livingston tenant for at least thirty years, and Josiah Loomis, an ore digger at Livingston's iron mines and his tenant for twelve years.⁶³ They were, however, advised by shrewd Massachusetts land grabbers like David Ingersoll, Colonel Oliver Partridge, Brigadier-General Joseph Dwight, and Colonel John Ashley.⁶⁴

Ingersoll had discovered that lands of the Mohicans in the Taconic (formerly Taghkanick) Mountains, in the north-east corner of the Livingston Manor, and within the Van Rensselaer claims, had never really passed out of Indian hands. He made a deal with the other speculators to get these lands and to colonize them. Emissaries were sent to incite the inhabitants not to pay rent to New York landlords, but to take the land from Massachusetts free and clear for a small payment.⁶⁵ Disgruntled tenants like Josiah Loomis and Michael Hallenbeck were easily convinced. Partridge, fishing in troubled waters, adopted stratagems to secure the aid of Massachusetts.⁶⁶

Meanwhile, Livingston began to take steps to protect his property. He started an action of trespass against Hallenbeck, and warned Loomis, a tenant at will, to leave.⁶⁷ In January, 1752, he protested to the New York Council that he was re-

⁶² Ellis, *Hist. of Columbia Co.*, p. 37; *Columbia County at the End of the Century*, p. 36. F. L. Pope says Hallenbeck was on Livingston's property since 1692. *Loc. cit.*, p. 63.

⁶³ Handlin, *loc. cit.*, p. 57.

⁶⁴ Pope, *loc. cit.*, pp. 58-61.

⁶⁵ *Doc. Hist. of N. Y.*, III, 729, 730, 746, 774, 807.

⁶⁶ He first represented Loomis and Hallenbeck as encroachers on public lands yet ungranted. The Massachusetts General Court then granted him the authority with which to approach Livingston. *Ibid.*, III, 730, 754; Pope, *loc. cit.*, pp. 61, 63.

⁶⁷ *Doc. Hist. of N. Y.*, III, 729; *Columbia County at the End of the Century*, I, 36. Affidavit of William Williams, August 3, 1753; Andries Bruisie, August 23, 1753; Thomas Loomis, August 23, 1753; Robert Livingston to Josiah Loomis, January 17, 1752 and February 4, 1752, Redmond-Livingston Mss; *John Doe ex dem Robert Livingston, Jr. v. Josiah Loomis*; same v. *Richard Roe, Michael Hallenbeck*, Ms Minute Book of the Supreme Court of Judicature, 1750-1754, p. 119.

ceiving threatening letters, upon which the Council offered a reward for the arrest of their author.⁶⁸ When Oliver Partridge wrote Livingston not to molest Hallenbeck and Loomis, who were holding Massachusetts titles which were being granted by his committee, the harassed landlord petitioned Clinton to get Massachusetts to disavow this committee.⁶⁹ In May, Livingston appealed to the Council which ordered the Attorney-General and Surveyor-General to study the matter.⁷⁰ Both upheld Livingston's claims,⁷¹ and on the advice of the Attorney-General a committee was asked to formulate representations to the Massachusetts government.

This committee, condemning the attempts of Massachusetts intruders, reported in February, 1753 in favor of Livingston's claim and urged that steps be taken to restrain intrusions. The report was forwarded to Lieutenant-Governor Phips, of Massachusetts, who appeared to be inclined to cooperate in settling the controversy.⁷² In fact, a Massachusetts committee to negotiate a boundary with New York had been appointed the previous December.⁷³ However, the overtures were rejected by the New York committee, which preferred to sit upon its rights without compromise.⁷⁴ This attitude naturally hardened that of Massachusetts. Its land committee claimed the disputed area on June 12 and shortly after recommended that commissioners be sent to grant titles to "squatters" (*i. e.* Livingston's tenants) or, upon their refusal to accept Massachusetts jurisdiction, to others.⁷⁵ The border disturbances that followed compelled

⁶⁸ *Calendar of Council Minutes*, p. 383.

⁶⁹ March 24, 1752, *Doc. Hist. of N. Y.*, III, 727-730.

⁷⁰ *Report of the Regents on Boundaries of N. Y.*, II, 99-100; *Cal. of Council Minutes*, p. 383.

⁷¹ Report of Attorney-General, May 28, 1752, *Doc. Hist. of N. Y.*, III, 730-732; May 4, 1752, *ibid.*, p. 733.

⁷² *Ibid.*, III, 734-738; *Report of the Regents on Boundaries of N. Y.*, II, 100-104, 105.

⁷³ *Acts and Resolves, Public and Private of the Province of Massachusetts Bay*, XIV, 660.

⁷⁴ May 1, 1753, *Report of the Regents on Boundaries of N. Y.*, II, 107-108.

⁷⁵ *Acts and Resolves*, XV, 16, 28.

New York to reconsider; commissioners were appointed to examine the eastern boundaries.⁷⁶ But by July, 1753 violence had flared on the border. The commissioners' report, affirming New York's title, urged delay in extending jurisdiction to regions east of the Massachusetts grants provided no more were made by the rival colony.⁷⁷ With the olive branch went the threat to protect New York settlers and a proclamation for the seizure of the captors of two New Yorkers.

While these negotiations were being conducted, the activity of Massachusetts speculators was not diminished. In November, 1752, William Bull and fifty-seven others, many of whom were Livingston's tenants, petitioned for lands west of Sheffield.⁷⁸ In December, General Dwight led a committee to appraise and report on the lands. The committee, invited by Livingston in May 1753 to examine his manor rolls, and discovering that many petitioners thought that they had signed for lands east of the manor, agreed to stay proceedings. But a Sheffield surveying party soon violated the agreement. David Ingersoll persuaded Livingston tenants not to pay quit-rents but to petition for Massachusetts titles. Furthermore, the General Court ordered Dwight to bail out and defend George Robinson, one of Livingston's tenants-at-will, whose home had been burned by Livingston's employees, and who had been arrested for trespass.⁷⁹

But Livingston was no less active in his efforts to protect his property. He tried to arouse other landlords by sounding a note of alarm. "Infection will very soon be general," he wrote to William Alexander, "and then no man that had an estate in this Province or perhaps in North America, will be safe or able to call it his Owne."⁸⁰ In a petition to Clinton on May 31, 1753,

⁷⁶ July 4, 1753, *Report of the Regents on Boundaries of N. Y.*, II, 113-114.

⁷⁷ *Ibid.*, II, 114-117.

⁷⁸ *Doc. Hist. of N. Y.*, III, 739-749.

⁷⁹ *Ibid.*, III, 746-748; *Report of the Regents on Boundaries of N. Y.*, II, 119-121; Pope, F. L., *loc. cit.*, pp. 65-67.

⁸⁰ March 26, 1753, Mss of Lord Stirling, William Alexander (N. Y. Hist. Soc.).

he prayed for relief from the activities of Massachusetts which encouraged intrusions particularly by providing bail for trespassers like Robinson.⁸¹ In July, through an armed band of retainers, he made effective his refusal to renew leases to tenants who had accepted Massachusetts title. These men burned George Robinson's home and carried off the wheat from Loomis' fields, which they laid waste.⁸²

The Massachusetts reprisals that followed intensified the border violence. A Livingston tenant, Van Deusen, and his son were arrested and his land granted to a claimant who was willing to take a Massachusetts title.⁸³ On July 28, 1753, Governor Clinton issued a proclamation for the arrest of those involved, a copy of which was forwarded to Lieutenant-Governor Phips. Under this proclamation Hallenbeck was arrested. In addition, Joseph Paine, another troublesome Livingston tenant, was imprisoned for cutting down some of Livingston's trees.⁸⁴ Meanwhile the bitterness of the controversy was reflected in the warning that Henry Van Rensselaer sent to Robert Livingston, "that the New England People Intirely Indendeth to Take you Dad or Alife."⁸⁵ Aroused by these events, the Boston government protested that while it had released the Van Deusens on bail, Hallenbeck was held in a Dutchess County prison without bail.⁸⁶ Clinton answered with an announcement that Hallenbeck had made good his escape.⁸⁷ But by the end of 1753 New York authorities were still insisting on their rights.⁸⁸

81 *Doc. Hist. of N. Y.*, III, 739-749.

82 *Ibid.*, III, 754-756.

83 July 19, 1753, *ibid.*, III, 761; James Alexander to Colden, July 30, 1753, *Colden Papers*, IV, 401.

84 *Doc. Hist. of N. Y.*, III, 749-752, 767-774, 784.

85 Dated August 11, 1753, *ibid.*, III, 753.

86 Report of Mass. General Assembly to Gov. Shirley, Sept. 11, 1753; Shirley's letter to Clinton, Sept. 17, 1753. *Report of the Regents on Boundaries of N. Y.*, II, 119-122; *Doc. Hist. of N. Y.*, III, 754-757.

87 Oct. 1, 1753, *ibid.*, III, 758-759.

88 Report on the papers from Mass. Bay Nov. 16, 1753, *ibid.*, III, 759-767; *Report of the Regents on Boundaries of N. Y.*, II, 125-131.

Whatever disposition Lieutenant-Governor DeLancey had to settle the affair in 1754 was dispelled by the pressure of events.⁸⁹ The Massachusetts General Court professed its willingness to compromise but restated its side of the case and reaffirmed its determination to protect its citizens.⁹⁰ Meanwhile one of its committees, the members of which included Loomis and Hallenbeck, was at work granting titles to settlers. They were supplied with public funds and brought back bail for Paine who was still in prison. To block their activities Livingston sought the right to arrest them with a *posse comitatus*.⁹¹ By April, the General Court deplored the excessive bail required for Paine,⁹² but urged a peaceful settlement, the sense of which Governor Shirley of Massachusetts communicated to DeLancey.⁹³ These efforts resulted in the appointment of boundary commissioners by both provinces. But their negotiations did not settle the controversy.⁹⁴

Affairs were taking a definite turn for the worse. By June 1754 Massachusetts speculators, fearful of the success of these efforts at compromise, had purchased unextinguished Stockbridge titles.⁹⁵ In the autumn, Livingston forewarned Sheriff Yates to prepare for trouble by getting reliable deputies. He also urged him to capture Loomis.⁹⁶ Indeed, he wrote directly to Governor Shirley explaining how Massachusetts claimants, especially Ingersoll, were weaning away his tenants and dis-

89 DeLancey succeeded Clinton Oct. 12, 1753 and brought to the lieutenant-governorship a bitter hostility to Livingston.

90 February 4, 1754, *Report of Regents on the Boundaries of N. Y.*, II, 133-135.

91 Livingston to DeLancey, Feb. 12, 1754, *Doc. Hist. of N. Y.*, III, 767-768.

92 *Ibid.*, III, 769.

93 April 22, 1754, *ibid.*, III, 771-772.

94 Massachusetts voted its commission on April 18, 1754 and New York appointed them on May 9, 1754. *Report of the Regents on Boundaries of N. Y.*, II, 133-141. Cf. *ibid.*, II, 139, 143 *et seq.*

95 Handlin, *loc. cit.*, p. 60.

96 Robert Livingston, Jr. to Abraham Yates, Oct. 7 and 21, Dec. 12, 1754, and Jan. 31, 1755, Yates Papers (N. Y. P. L.), Box I, nos. 4, 5, 6, 7.

turbing him in the possession of his property. Even Van Deusen had been won over by the free land "the Boston people" tendered those who supported them.⁹⁷

Nor was the growing disaffection confined to Livingston Manor. It extended to Claverack on Van Rensselaer property. Here Robert Noble and Hallenbeck organized a military force to protect the tenants.⁹⁸ In February, 1755, this armed band captured Constable Clark Pixley and John Morris, who had attempted to arrest its leaders, and carried the prisoners off to a Springfield gaol.⁹⁹ Thereupon Henry Van Rensselaer, a justice, ordered Sheriff Yates to arrest Thomas Whitney, one of the band. The Sheriff captured Whitney but had the misfortune to fall into the hands of Noble and his men. They rescued Whitney and took Yates to Sheffield where he was freed only after giving £150 bail.¹⁰⁰ These events greatly aroused the Van Rensselaers and induced Lieutenant-Governor DeLancey to send a sharp note to Governor Shirley demanding the release of Pixley and Morris and the revocation of Noble's commission as an officer.¹⁰¹

By the end of February, 1755, the controversy was fast becoming a miniature border war. Hallenbeck was commissioned to protect Massachusetts' rights. Noble turned his home into a fortress and his followers, many Livingston and Van Rensselaer tenants, bore a formidable array of weapons.¹⁰² Livingston and Van Rensselaer led armed retainers who carried fire to the

97 Robert Livingston to Shirley, January 16, 1755, letter cited in Livingston, J. H., "The Livingston Manor," *Publications of Order of the Colonial Lords of Manors in America*, no. 1 (1914), pp. 21-22; Livingston to DeLancey, Feb. 7, 1755, *Doc. Hist. of N. Y.*, III, 774-775.

98 *Cal. of Hist. Mss.*, II, 635, 645, 658; N. Y. Colonial Mss, LXXX, 168.

99 Feb. 8, 1755, affidavit of William White, *Doc. Hist. of N. Y.*, III, 776; also Joseph Pixley's affidavit, Feb. 8, 1755, *ibid.*, III, 775; affidavit of Henry Van Rensselaer, Feb., 1755, Van Rensselaer-Fort Papers (N. Y. P. L.).

100 February 13, 1755, affidavit of Yates, *Doc. Hist. of N. Y.*, III, 777-778, 780.

101 February 17, 1755, *ibid.*, III, 779.

102 Affidavit of John Van Rensselaer, Feb. 22, 1755, *ibid.*, III, 780-2.

crops of their enemies and dragged the men off to prison. These forays brought swift reprisals led by Noble, Loomis, Hallenbeck, Ashley, and Ingersoll. Many Livingston tenants were brought to the Springfield jail. Unable to withstand these attacks with his private army, Livingston sought relief from DeLancey. Perhaps Yates's letter to DeLancey, describing the indignity to which he had been subjected, prodded DeLancey into a more vigorous course of action.¹⁰³

In April, 1755, the New York counter-attack began in earnest. A proclamation was issued on April 2 ordering the seizure of Noble.¹⁰⁴ Yates mustered a large force and on April 13 stormed the strongholds of his enemies. Noble fled to the hills, leaving his wife to put up a futile resistance. The roof of Nehemiah Hopkins' home was torn down, and the opposition at Darby's house was overwhelmed.¹⁰⁵ Loomis was amongst those captured, much to Livingston's delight.¹⁰⁶ The next day a skirmish took place, in which the New Yorkers captured many prisoners. The fierce determination of the tenants was reflected in the statement of William Rees, a recalcitrant Livingston tenant, "If I go out I must die," and that of Hendrick Brusie, who vowed that he "would not go till he was killed."¹⁰⁷ In the exchange of shots that occurred, a New York deputy, Matthew Furlong, killed Rees. Massachusetts took jurisdiction of the case, and held an inquest which labelled the killing murder. A proclamation offered a reward of £100 for the capture of Furlong. Lieutenant-Governor Phips demanded from DeLancey the surrender of Furlong, who had been arrested but was out on bail. The request, however, was refused.¹⁰⁸

103 *Ibid.*, III, 782-5.

104 April 2, 1755, *ibid.*, III, 785-7.

105 *Ibid.*, III, 789-790.

106 Livingston to Yates, April 4, and May 2, 1755, Yates Papers (N. Y. P. L.), Box I, nos. 10 and 11.

107 *Doc. Hist. of N. Y.*, III, 818-819, 788-791; *Cal. of Council Minutes*, p. 415; affidavit of November 21, 1755 by Dirck W. Ten Broeck, *et al.*, Redmond-Livingston Mss.

108 April 28, 1755, *Doc. Hist. of N. Y.*, III, 789-790; *Calendar of Council Minutes*, p. 416.

In May, 1755, the border men took swift vengeance. A posse of over one hundred, led by Noble, Whitney, and John Van Gelder, an Indian who had married a white woman, swooped down upon Livingston's Ancram iron works and carried off eight workmen. These captives were charged with the murder of Rees. But upon failure of proof, they were sent to Springfield to be held as hostages, over the vain protests of DeLancey, until the New England men were released. This episode was doubly alarming to Livingston because an Indian was actively involved against him, and because his iron foundry, which was manufacturing war materials for an impending expedition against the French, was seriously crippled by the loss of his workmen. Therefore Livingston began to arm his loyal tenants and to fortify their homes for the conflicts which in fact continued on a small scale.¹⁰⁹

Massachusetts appeared determined to press every advantage until New York proved more accommodating. The General Court pursued a policy of sale at any price, or even at no price, to Livingston tenants. Noble used a posse to protect New England surveyors who laid out tracts for settlers.¹¹⁰ But, at the same time, in May, Lieutenant-Governor Phips offered to free the New York hostages, if New York reciprocated. Furthermore, Governor Shirley, who shortly after resumed the active conduct of Massachusetts affairs, showed a desire to compromise.¹¹¹ Livingston's insistence and the delay of the operations against Crown Point and Niagara, during the French and Indian War, made DeLancey more willing to accept these proffers.¹¹² On June 5, 1755, New York freed all the New England rioters, except Loomis and Paine, and proposed a settlement of the controversy. But Massachusetts declined to free any New

109 *Doc. Hist. of N. Y.*, III, 791, 792, 793-5, 798, 801, 809-811; Livingston to Yates, May 2, 1755, on evictions of rebellious tenants, Yates Papers (N. Y. P. L.), Box I, no. 11; Pope, *loc. cit.*, pp. 73, 74.

110 *Doc. Hist. of N. Y.*, III, 807, 810.

111 May 21, 1755, *ibid.*, III, 795-6; Handlin, *loc. cit.*, p. 62.

112 *Doc. Hist. of N. Y.*, III, 811.

Yorkers, because of the exceptions.¹¹³ The summer was passing with sporadic outbreaks and reciprocal demands for the release of prisoners. Yet the situation was less tense. In August Loomis was finally freed. Soon after, Paine also was probably liberated, since he was no longer a subject of correspondence.¹¹⁴ Furthermore, Governor Shirley, who had resumed his executive functions in Massachusetts, was less amenable than Phips to the pressure of speculators; and Governor Hardy, who had succeeded DeLancey in New York that fall, seemed sincerely to desire compromise in his correspondence with Shirley.¹¹⁵ In February, 1756, the New York Governor requested the Lords of Trade to intercede.¹¹⁶ The General Court no longer lent its official sanction to schemes of colonization westward of the twenty mile line.¹¹⁷ The time for peace seemed at hand.

But again strife dispelled the approaching harmony. In May, 1756, New England speculators, including Noble and Whitney, renewed the purchase of Indian tracts. This continued throughout the ensuing years of controversy.¹¹⁸ The interests of the Indians were inextricably intertwined with those of New England speculators and with those of the dissatisfied tenants of Livingston and Van Rensselaer. So much was this the case, that when Livingston and the Sheriff went to eject Hendrick Bruisie on November 25, 1756, they were interrupted by the Indian, John Van Gelder. In the stiff resistance, Van Gelder wounded one of

113 *Cal. of Council Minutes*, p. 420; *Doc. Hist. of N. Y.*, III, 795-803. On June 5, the Massachusetts proposal for arbitrators on boundaries was read in Council. *Cal. of Council Minutes*, p. 417.

114 *Ibid.*, p. 420.

115 *Doc. Hist. of N. Y.*, III, 817-819.

116 Hardy to Lords of Trade, Feb. 23, 1756, *Doc. Rel. to Col. N. Y.*, VII, 38.

117 Pope, *loc. cit.*, p. 75.

118 More extensive purchases were made in Sept. 1756; John and William Hallenbeck and Benjamin Franklin bought tracts in March, 1757; Benjamin Willard and Andrew Stevens, in Nov. 1758. *G. B. Hist. Mss Commission 14th Report, App., pt. X. The Mss of the Earl of Dartmouth. American Papers*, Pt. I, Vol. II, pp. 7, 8.

the posse, Rypenberger, a loyal Livingston tenant, for which he was arrested.¹¹⁹ Van Gelder's son appealed to the Stockbridge Indians for assistance. The threats against Robert Livingston hastened a request to the Council for protection. General Abercrombie was ordered to send twenty-five troops for this purpose.¹²⁰

In view of the dangerous situation that Indian purchases involved, Hardy renewed his efforts to settle the whole problem. In December, 1756, he complained of the Indian purchases to the Lords of Trade and sought their prompt intervention.¹²¹ Meanwhile he urged the Council to come to terms with Massachusetts.¹²² By May, 1757, the Lords of Trade came to a decision and recommended a line twenty miles east of the Hudson.¹²³ The situation looked hopeful. However, delays prevented the execution of this recommendation notwithstanding the willingness of DeLancey, who had returned to power in June, 1757, to conform to the wishes of the Lords of Trade.¹²⁴

But again a rude interruption took place. In March, 1757, settlers on Taconic Mountains purchased more land from the Stockbridge Indians.¹²⁵ In May, 1757, Van Gelder, who had been released at the instance of Sir William Johnson, led an armed foray in which two New Yorkers were killed.¹²⁶ Living-

119 *Doc. Hist. of N. Y.*, III, 818; *Doc. Rel. to Col. N. Y.*, VII, 206-208; *Cal. of Coun. Min.*, p. 431.

120 *Doc. Rel. to Col. N. Y.*, VII, 206-208; *Cal. of Coun. Min.*, p. 431; Livingston to Yates, Dec. 15, 1756, Yates Papers (N. Y. P. L.), Box I, no. 22.

121 Dec. 22, 1756, *Doc. Rel. to Col. N. Y.*, VII, 206-208; *cp.* other correspondence of Feb. 23, 1756, April 13, 1756, etc., *ibid.*, pp. 38, 79, 80; *Report of the Regents on Boundaries of N. Y.*, II, 145-146.

122 Feb. 16, 1757, *Journal of the Legislative Council*, II, 1292.

123 May 28, 1757, *Doc. Rel. to Col. N. Y.*, VII, 223; *Report of the Regents on Boundaries of N. Y.*, II, 147-148, 148-150. In fact the King did nothing until 1767 when he merely referred the matter to a joint commission. *Doc. Rel. to Col. N. Y.*, VIII, 338.

124 *Ibid.*, VII, 206, 221-224, 234-236, 273, 334.

125 Present site of Copake and Mt. Washington. Pope, *loc. cit.*, p. 82.

126 James Burton and Caspar Ham were killed. *Doc. Hist. of N. Y.*, II, 744; III, 819-20; *Doc. Rel. to Col. N. Y.*, VII, 273; Pope, *loc. cit.*, p. 82, citing Springfield Records, Ms, I, 11, 114.

ston, fearful for his own life, petitioned for a guard of fifty soldiers.¹²⁷ Hardy urged Johnson to do all in his power to dissuade the Stockbridge Indians from carrying fire and death to the border.¹²⁸ On June 8, a proclamation was issued for the arrest of the rioters.¹²⁹ It was given secretly to Livingston, which enabled him to round up the ring-leaders before any public warning had been issued.¹³⁰ These prisoners were held until November 1758, when they were released on bail.¹³¹ Meanwhile, the French and Indian War put an end to continued fighting.

The seeds of unrest were sown during the next three years. Extensive Indian sales were illegally made in February, 1759, to Massachusetts speculators and settlers. In addition, the moving line of New England settlers, quickening after the active fighting of the War, boded ill for future harmony. In February, 1762, an agent of Livingston observed the formation of the rioters' "Club."¹³² Despairing of inducing further Massachusetts support, the holders of rival grants tried to get their titles affirmed by New York. For this purpose they sent as their spokesman one who had not been involved in the earlier controversies, Robert Miller.¹³³ But before Miller could get a hearing from the Governor, Livingston, forewarned, blocked these efforts by obtaining a proclamation on March 31, 1762,

127 Livingston to Yates, May 15, May 18, 1757, Yates Papers (N. Y. P. L.), Box I, nos. 28, 29.

128 May 16, 1757, *Doc. Hist. of N. Y.*, II, 744; *Doc. Rel. to Col. N. Y.*, VII, 273.

129 *Doc. Hist. of N. Y.*, III, 821-823; *Cal. of Coun. Min.*, p. 433. Proclamation broadside in Redmond-Livingston Mss.

130 *Doc. Hist. of N. Y.*, III, 823; Livingston to Yates, July 19, 1757, Yates Papers (N. Y. P. L.), Box I, no. 33; DeLancey to Lords of Trade, July 30, 1757, *Doc. Rel. to Col. N. Y.*, VII, 273.

131 *Doc. Hist. of N. Y.*, III, 819-824; *Cal. of Coun. Min.*, p. 443.

132 *Acts and Resolves of Mass.*, XVI, 482; XVII, 242; *Doc. Hist. of N. Y.*, III, 826.

133 R. Livingston to P. Livingston and James Duane, March 22, 1762, *Doc. Hist. of N. Y.*, III, 825-6.

" . . . strictly injoining all Persons to forbear and desist from such violent and unjust Proceedings . . . " ¹⁸⁴

Thus were the gathering storms held in check for a few more years. Then, breaking forth with heightened fury, they engulfed Philipse's Highland Patent and Cortlandt Manor as well as Livingston Manor and Rensselaerswyck.

¹⁸⁴ Redmond-Livingston Mss; *Doc. Hist. of N. Y.*, III, 825, 827, 828.

CHAPTER V

THE GREAT REBELLION OF 1766

IN the period that followed the French and Indian War, the purchase of disputed Indian titles became a hopeful avenue of escape for the oppressed tenants in Dutchess and Upper Westchester Counties, and on the Van Rensselaer and Livingston Manors. Indian title disputes, like boundary controversies, seemed to be occasions for deep-rooted small farmer agitation. The discontent did not confine itself to litigation. It flared into serious peasant rebellions that appeared in 1766 in disaffected areas in the eastern part of Hudson Valley from Cortlandt Manor to Rensselaerswyck.

The issue between rival claimants was first joined in the early '60s in the Philipse Highland Patent. Here the Wappinger Indians, under their grand sachem Daniel Nimham, had a long time claimed all but a small portion of the patent, the bulk of which had never been legally transferred to the patentees.¹ The Indians sold titles to discontented Philipse tenants who either bought their land outright or became tenants on more favorable terms, usually for 999 years.² By 1756 the proprietors, Philip Philipse, Beverly Robinson, and Roger Morris, who derived their title from Adolph Philipse, seized the land while the Wappingers were fighting for the King and while their old men, women, and children were at Stockbridge.³ By 1761 they

1 Vide supra et infra.

² For leases of 999 years to Benjamin Palmer, Joseph Crow, Jr., John Rider, Daniel Munroe, and Stephen Wilcox, all in 1764, John Tabor Kempe Papers, Lawsuits, P-R. Massachusetts granted permission to sell Stockbridge Indians land before June 1762 and in Nov. 1765. *Acts and Resolves*, XVIII, 70, 71; XVII, 225. See also "Protest to Follerker Dow, Major of Albany . . . June 30, 1766," British Museum, Additional Mss, Vol. 22,679, fol. 17; *Geographical, Historical Narrative . . .*, Vol. 707, fols. 24, 26, pp. 2, 5, 6; *G. B. Hist. Mss Commission, 14th Rep., App. pt. X, Pt. I, Vol. II, pp. 7, 8.*

³ Philipse-Gouverneur Land Titles (Col. U.), nos. 7, 12, and 13. These trace the land titles and include a copy of the patent of March 27, 1761 for lands adjoining the Oblong. *Cf. Geographical, Historical Narrative . . .*, Vol.

brought ejectment suits against those who claimed land titles through the Indians.⁴ When Nimham countered by appealing to the Council, Attorney-General Kempe was ordered to investigate the claim which he reported technically deficient.⁵

In 1763 a number of Philipse tenants renounced their leases. Taking others from the Wappingers, they continued to occupy the land but refused to pay rent to those claiming the land under the original patentee. The Philipse representatives ousted them by fifteen successful suits at law. But this remedy was costly and the defendants were invariably financially irresponsible.⁶ Hence on the advice of counsel the proprietors appealed to chancery on February 6, 1765, setting forth these circumstances.⁷ Meanwhile, in March, another petition of Nimham presenting his claims against the Philipse representatives had arisen before Lieutenant-Governor Colden and the Council,

707, fols. 24-25, pp. 2-4; Pelletreau, W. S., *History of Putnam County, New York* . . . , pp. 79-82.

4 For example, *Beverly Robinson v. Samuel Munroe*, Philipse-Gouverneur Land Titles, no. 7. Cf. Geographical, Historical Narrative . . . , Vol. 707, fol. 27, p. 7; *James Jackson ex dem Roger Morris, et al. v. John Stiles, Edward Grey* (1761); also against Seth Paddock, and John Manley; *James Jackson ex dem Philip Philipse v. John Stiles, Samuel Birchard* (1761); *James Jackson ex dem Beverly Robinson v. John Stiles, Nathaniel Porter* (1761), Hall of Records, New York City. See also Ms Minute Books of the Supreme Court, 1756-61, p. 250.

5 July 28, 1762, *Calendar of Council Minutes*, p. 459. The report dated August 2, 1762, observed that Nimham's description of the land was not proper. Chalmers Collection (N. Y. P. L.), II, 26.

6 For itemized account of expenses from Oct. 1753 down through December 1766, see Philipse-Gouverneur Land Titles (Col. U.), no. 20. Within these dates the following have been examined (all in 1765, except where indicated): *Philip Philipse et al. v. Richard Fenn, Jeremiah Ballard*; also against Joseph Crow, Nathaniel Robinson; *John Denn ex dem Beverly Robinson v. Elisha Baker*; also against Isaac Perry; *James Jackson ex dem Philip Philipse v. John Stiles, Benjamin Barber*; also against John Ferris, John Rabbleyea, Jonathan Paddock, Benjamin Weeks, Samuel Yates, Israel Cole (1764); *James Jackson ex dem Beverly Robinson v. Samuel Munroe* (1764); also against David Akins (1763), and Joe Covey, Parchment Rolls in Hall of Records, New York City and Ms Minute Book of the Supreme Court, 1762-1764, pp. 229, 349, 455.

7 Pelletreau, *Hist. of Putnam County*, p. 69.

who constituted the high court of chancery. The issue was joined and a trial held at a hearing on March 6.⁸

The court was made up of Cadwallader Colden, Daniel Horsmanden, William Smith, John Watts, William Walton, Oliver DeLancey, and Joseph Reade, all of whom were great landlords. The stakes involved indirectly concerned the Livingstons and Van Rensselaers against whom the Stockbridge Indians were making similar claims. It is not insignificant that at least one member of the court, William Smith, was bound to the Livingston family through ties of marriage.⁹ The Philipse representatives set forth their title as derived from Adolph Philipse. They charged that Samuel Munroe, a former Philipse tenant, had combined with several others, including Stephen Wilcox and Charles Peck, to stir up the Indians and to induce Philipse tenants to take Indian titles. Beverly Robinson produced at the trial a deed dated August 13, 1702, which purported to have transferred the Indian title to Adolph Philipse.¹⁰ Nimham contended that Adolph Philipse had in fact never purchased Indian title to over 200,000 acres claimed, and had by his subsequent actions and statements demonstrated this fact.¹¹ Furthermore, he maintained that their lands had been taken while they were fighting for the King in the French and Indian War. As for the deed of 1702, Nimham asserted that it was spurious, not only in law, because it was made with-

8 Philipse-Gouverneur Land Titles, nos. 13 and 14; Ruttenber, *Indian Tribes of Hudson's River*, pp. 329-330; Pelletreau, *op. cit.*, p. 70; *Cal. of Coun. Min.*, p. 467; Geographical, Historical Narrative, fol. 30, pp. 13-14. For a bundle of Kempe's material on the controversy and related matters, John Tabor Kempe Papers, Lawsuits, P-R.

9 Smith's daughter Susan married Robert James Livingston in 1747 and his son William, Janet Livingston in 1755. Livingston, *The Livingstons of Livingston Manor*, p. 74.

10 Philipse-Gouverneur Land Titles, nos. 13, 14; *cf.* Land Papers, XVIII, 128; Pelletreau, *op. cit.*, pp. 70, 75-76. Beverly Robinson brought actions against Stephen "Wilcocks" (Wilcox) and Joseph "Craw" (Crow) for buying pretended titles. *Beverly Robinson qui tam v. Stephen Wilcocks*, also against Joseph "Craw", Jr., Parchment Rolls, Hall of Records, New York City.

11 See above on the fraudulent nature of the Philipse patent.

out license, after the patent of 1697 had been granted, and was never registered with or acknowledged before any public authority, but also in fact, because its paper bore a stamp later than 1702. Just as Nimham's representative was about to point out the fraud in the deed, a Councilor took it out of his hands and bade Nimham and his party go home, with the remark that, since Mr. Robinson's deed covered the whole land in question, the Indians had no rights to it.¹²

The decision of the Court was a foregone conclusion. Not only was the Court obviously opposed to the Indian claims, but also every lawyer in the province that Nimham sought to engage had been previously retained by the other side. Even when he attempted to speak for himself, one of the lawyers said "he was liable to be committed for pretending to offer a word in vindication of a claim to those Lands, in opposition to a Grant of the Crown. . ." ¹³ On March 6, 1765 the report of the Council committee substantially upheld the Philipse cause. Furthermore, because Samuel and Daniel Munroe, Stephen Wilcox, and Joseph Crow had become actively involved on the side of the Indians, the Council committee charged them with the high misdemeanor of disinherison, or deprivation of the inheritance, of the crown. A Council proclamation attempting to allay tenant unrest commanded a posse to arrest them.¹⁴ The Attorney-General was ordered to proceed against them.¹⁵

However, this decision by no means ended the affair. Nimham subsequently went to England to appeal to the Crown, where

12 Philipse-Gouverneur Land Titles, no. 13; Pelletreau, *op. cit.*, pp. 73-74, 79-82; Land Papers, XVIII, 127; Geographical, Historical Narrative, fol. 30, pp. 13-14; fol. 49, p. 51.

13 Philipse-Gouverneur Land Titles, no. 13.

14 Philipse-Gouverneur Land Titles, no. 13; Land Papers, XVIII, 142. Cf. *Cal. of Coun. Min.*, p. 467; *Doc. Rel. to Col. N. Y.*, VII, 868-870; Geographical, Historical Narrative, fol. 29, pp. 11, 12; fols. 30-31, pp. 15-16; see also *Beverly Robinson qui tam v. Edward Grey, Jr.*, and against Joseph Fowler, Jr., Ms Minute Book of the Supreme Court 1766-69, p. 328.

15 Pelletreau, W. S., *op. cit.*, pp. 70-73.

he won further hearings for his cause.¹⁶ The controversy became more extended and complicated when, in April, 1765, the Mohicans at Stockbridge claimed Van Rensselaer land between Claverack and Kinderhook.¹⁷ John Van Rensselaer brought ejectment actions against many of his tenants.¹⁸ The Indians and settlers with Indian title, charging fraud, seemed increasingly disposed toward using violence to protect their land. Furthermore the ejectment action of Livingston against his tenants boded ill for future harmony.¹⁹ In the face of violent urban upheavals against the Stamp Act as well as of rural disturbances, Secretary Conway instructed Governor Moore in October, 1765, to use "the utmost Exertion of your Prudence . . . and the Vigour necessary to suppress Outrage and Violence" of "the Lower and more ignorant of the people."²⁰ The disorder in New York and Boston, which accompanied the passage of the Stamp Act, offered encouragement to the violence of settlers and ejected tenants.²¹

Little wonder that the settlers refused to submit to the Philipse proprietors. The terms they were offered, which were one year leases and bonds of £1,000 to guarantee fulfillment.

16 *Ibid.*, pp. 75-76. *Vide infra*.

17 "Petition to Governor Moore . . . from . . . the Mohheekunuck Tribe . . .," British Museum, Add. Mss, Vol. 22,679, fols., 4, 5; *Doc. Rel. to Col. N. Y.*, VII, 892.

18 *James Jackson ex dem John Van Rensselaer v. John McArthur*; also against James Bagley, Thomas Millard, William Kellogg, Joseph Clarke, Ms Minute Books of the Supreme Court, 1764-66, p. 313.

19 *Peter Quiet ex dem Robert Livingston, Jr. v. Robert Stout, Petrus Knickerbacker*, also against Anthony Tancret, James Smith, and Joseph Bird, Ms Minute Book of the Supreme Court 1764-66, pp. 231, 288.

20 "Correspondence of Ministers with Governor Moore of New York . . .," Brit. Museum, Add. Mss, Vol. 12,440, fol. 7; cf. "Protest to Follerker Dow . . . June 30, 1766," *loc. cit.*, Vol. 22,679, fol. 17.

21 Colden to Henry Seymour Conway, February 21, 1766, and to Lord Jeffery Amherst, June 24, 1766 stressed this theme. *Colden Letter Books*, II, 99, 111-112. Indeed some authorities have confused these anti-rent disturbances with the agitation of the Sons of Liberty. Smith, P. H., *General History of Dutchess County from 1609 to 1876, Inclusive*, p. 55 n.

contrasted quite unfavorably with the 999 year leases tendered by the Indians.²² Determined to reinstate dispossessed tenants by force, the settlers boldly advertised publicly in November, 1765, summoning tenants to meet to reinstate those evicted.²³ The Dutchess rebels were resolved to compel their landlords to grant security of tenure and lower rents. To accomplish this they vowed, "They would stand by each other with Lives & fortunes, would not suffer any particulars of them to compound with their Landlords without the Rest."²⁴ Their leaders, William Prendergast, Samuel and Daniel Munroe, Joseph Crow, Stephen Wilcox, Elisha Cole, Isaac Perry, Silas Washburne, and Jacobus Gonsales, many of whom had suffered ejectments, prohibited all service of warrants on the days of their meetings and promised to rescue any who were arrested for refusal to pay rents or for any activity in furtherance of their movement.²⁵

In the ensuing conflict the small farmers desperately sought to defend what they believed was their equitable right to the land. They bitterly felt that this right, as Prendergast declared, "could not be defended in a Court of Law because they were poore therefore they were determined to do them [selves] Justice [and] that poor Men were always oppressed by the Rich."²⁶ Alarmed by this mass resentment, the Philipse pro-

²² Geographical, Historical Narrative, fol. 32, pp. 17-18. Also see above, p. 131.

²³ November, 1765, *Cal. of Hist. Mss*, II, 759; *Weyman's New York Gazette*, September 1, 1766, hereafter cited as *N. Y. Gazette*; "Notes on July Assizes, 1766," Dutchess Co. (N. Y.), Miscellaneous Mss (N. Y. Hist. Soc.), hereafter cited as "Notes on July Assizes." See also affidavits of Eliphalet Stephens, David Akins, Gideon Prindle, Simeon Bundy, Ebenezer Weed, *et al.* in John Tabor Kempe Papers (N. Y. Hist. Soc.), Lawsuits, B-F, P-R, W-Y.

²⁴ Testimony of Moss Kent and Samuel Peters, *King v. Prendergast*, "Notes on July Assizes."

²⁵ Testimony of James Dickinson, Samuel Peters, George Hughson, Simeon Bundy, *et al.*, *ibid.* Cf. Parchment Rolls cited above, n. 6 *et seq.*

²⁶ Testimony of Moss Kent and of James Livingston, *King v. Prendergast*, *ibid.*

prietors petitioned the provincial authorities to prevent the violence threatened by the anti-rent movement.²⁷ But by March, 1766, the disorder had become widespread. It engulfed upper Westchester County where tenants united and seized the land.²⁸ Against the growing rebellion, Governor Moore issued a proclamation on April 2, 1766.²⁹

In April, the Westchester "levellers" carried forward the crest of small-farmer rebellion. They were dubbed "levellers" because they refused to pay rent to their landlord, Van Cortlandt, until he would remedy their insecurity of tenure.³⁰ These tenants desired a fee absolute rather than the life terms or the long term leases at low rentals that they had. In these respects they were somewhat better off than the Livingston, Van Rensselaer, and Philipse tenants.³¹ Yet, because three of their fellows had been arrested under the proclamation of April 2, a large number of them gathered and threatened a rescue from a New York City jail where the prisoners had been taken.³² Though the Dutchess rebels at first had shown a disposition to dissociate themselves from Westchester "levellers," they vigorously fol-

27 November 20, 1765, *Cal. of Hist. Mss*, II, 759.

28 Cheyney, E., "The Anti-Rent Movement and the Constitution of 1846" in Fick, *Hist. of N. Y.*, VI, 293; Smith, P. H., *op. cit.*, pp. 54-55; Handlin, *op. cit.*, p. 69; Hasbrouck, *The History of Dutchess County, New York*, pp. 91-92. H. B. Dawson erroneously minimized the anti-rent movement to a mere "local disturbance." *Westchester County, New York, during the American Revolution*, p. 3, n. 4; also his chapter in Scharf, *History of Westchester*, I, 179, n. 4.

29 Handlin, *loc. cit.*, p. 69.

30 Many conservatives used the expression as one of opprobrium. Montresor, James and John, *The Montresor Journals*, pp. 362-363 *et passim*. Captain Paul Rycaut in an examination of prisoners at Poughkeepsie on October 7, 1761, observed, "By what information I could collect from the inhabitants, those of the Nine Partners are a riotous people and Levellers by principle." *Doc. Hist. of N. Y.*, III, 987.

31 *Vide supra*, pp. 69-71.

32 April 20, 1766, *Montresor Journals*, pp. 360-361. Montresor says the number was 2,000. But W. S. Coffey in Scharf, *Hist. of Westchester*, I, 168, says it was 500. Governor Moore speaks of some thousands. Moore to Conway, April 30, 1766, *Doc. Rel. to Col. N. Y.*, VII, 825-6.

lowed their leaders in support of the movement to rescue comrades imprisoned in New York City.³³ The Governor, alarmed by exaggerated rumors that the rebels planned to burn the city, prepared for the onslaught by summoning the militia.³⁴

Even the Sons of Liberty, successful organizers of mass demonstrations against the Stamp Act, appeared to be perturbed at this militant manifestation against landlords. The keen-eyed Captain Montresor cynically noted that the Sons of Liberty were "great opposers to these Rioters as they are of the opinion no one is entitled to Riot but themselves."³⁵ Certainly their leaders, like John Morin Scott, who later sat in the court that condemned small farmer agitators, were more concerned with urban uprisings that reflected the colonial struggle of radical merchants, artisans, and mechanics against British restrictions, than with rural ones that small farmers aimed at the landed aristocracy.³⁶

The non-support of the Sons of Liberty must have been a grave disappointment to the rebels. For, when they went to New York City to deliver the "mob men," "they expected to be assisted by the poor people there."³⁷ Indeed they liked to think of themselves as rural Sons of Liberty. Significant are the words with which Prendergast later threatened an offending magistrate: "If any person or persons offended those whom you call the Mob—and we the Sons of Liberty," he should be punished with a mud bath, a whipping, and exile.³⁸ This was the substance of Prendergast's proclamation, issued at Kingsbridge where the rebels had gathered.

33 Cross examination of Moss Kent and testimony of Eliphalet Stephens and of Simeon Bundy, *King v. Prendergast*, "Notes on July Assizes."

34 April 21, 1766, *Montresor Journals*, p. 361; *Doc. Rel. to Col. N. Y.*, VII, 825-6; Stokes, I. N. Phelps, *The Iconography of Manhattan Island 1498-1909*, IV, 764.

35 *Montresor Journals*, p. 363.

36 *Vide infra*.

37 Testimony of Moss Kent, *King v. Prendergast*, "Notes on July Assizes."

38 Testimony of Samuel Peters, *ibid*.

This show of bold determination was matched by the Westchester men who threatened to pull down the city homes of Pierre Van Cortlandt and of Lambert Moore unless their demands with regard to land were recognized.³⁹ On May 1, a committee of six entered the city "to explain matters" in behalf of 500 comrades stationed north of the city at Kingsbridge.⁴⁰ But before the committee could act effectively, a show of military force and a stern proclamation dispersed the rebels whom they represented. The proclamation issued on April 30 offered a reward for the seizure of specifically named leaders "and other rioters, who dispossessed parties in Northcastle, Westchester County. . ." ⁴¹

This proclamation itself showed that the disaffection was spreading. It named three men from Dutchess County, William Prendergast,⁴² William Finch, and Samuel Munroe,⁴³ who were actively leading poor farmers against the Philipse patentees. Furthermore the informations for riot drawn by Attorney-General Kempe in April and July named twenty-six yeomen and laborers from Cortlandt Manor in Westchester County and seven from South Precinct and Beekman Patent in Dutchess County.⁴⁴ On May 6, a proclamation offered a £100 reward "for the taking of Pendergrast, Chief of the Country Levellers and £50 for either Munro and Finch, two officers, 'en second'." Prendergast on the next day narrowly escaped

39 April 29, 1766, *Montresor Journals*, p. 363.

40 *King v. Prendergast*, "Notes on July Assizes;" May 1, 1766, Stokes, *Iconography of N. Y.*, IV, 764; *Montresor Journals*, p. 363.

41 *Calendar of Hist. Mss.*, II, 762; *Cal. of Coun. Min.*, pp. 470-1. Benjamin Randolph's affidavit, April 29, 1766, mentioned 300 assembled at Northcastle joined by several companies who were determined to rescue several persons. *Ibid.*; Council Minutes, XVI, 48.

42 He appeared as a Philipse tenant of the Gore in 1766 residing near Pawling. See below for his companions' role. At that time, he was 39 years of age. Pelletreau, *op. cit.*, pp. 653-4.

43 He was one of the chief advisers to Nimham. *Vide supra*.

44 John Tabor Kempe Papers, Lawsuits, B-F.

capture.⁴⁵ By the middle of May, dispatches from Livingston Manor carried the news "that some hundreds of Tenants are also turned Levellers and are in arms to dispossess some and maintain others in their own, without rent or taxation."⁴⁶ This "levelling" tendency reminds one of the "natural rights" of the New Jersey anti-renters who contended, "No Man is naturally intitled to a greater Proportion of the Earth, than another . . ." and of the Shaysites who were urged to support those rights to which "the God of nature hath intitled" them.⁴⁷ On June 10, James Livingston, sheriff of Dutchess County, reported that John Way, arrested for debt, had been rescued from a Poughkeepsie jail a few days previously by a "mob" of five hundred which explained "that the debt was for rent which they did not approve."⁴⁸

45 *Montresor Journals*, pp. 364-365. Captain Montresor had a rather low opinion of civil officials. On May 7 he entered the note, "The alderman (Brewington) who was sent to apprehend Pendergrast, Ringleader of the country Rioters, informed the person he was the alderman and sent to seize, so gave him an opportunity of making his escape." *Ibid.*, p. 365.

46 Entry for May 17, 1766, *ibid.*, p. 366. Robert R. Livingston wrote to Robert Livingston, Jr., May 14, 1766, "...if you give anything by compulsions of this sort you must give up everything." Redmond-Livingston Mss.

47 The New Jersey article continues, "but tho' it was made for the equal Use of all, it may nevertheless be appropriated by every Individual. This is done by the Improvement of any Part of it lying vacant, which is thereupon distinguished from the great common of Nature, and made the Property of that Man who bestowed his Labour on it, from whom it cannot afterwards be taken, without breaking thro' the Rule of natural Justice; for thereby he would be actually deprived of the Fruits of his Industry." *N. Y. Weekly Post-Boy*, June 9, 1746; *New Jersey Archives*, XII, 308, 309. Cf. Eli Parsons' letter, Feb. 13, 1787, in *N. Y. Daily Advertiser*, March 6, 1787. Somewhat similar in tone is the argument of "state of nature" which the Vermonters used to confirm their right to independence. On July 4, 1776 the New York claim "expired also, to the inexpressible joy of the free citizens of Vermont, who, in consequence thereof, reverted to a state of nature, and have since formed government on the true principles of liberty." Allen, Ethan and Fay, Jonas, *A Concise Refutation of the Claims of New Hampshire and Massachusetts-Bay, to the Territory of Vermont...*, p. 11. Cf. Allen, Ira, *Some Miscellaneous Remarks and Short Arguments on a Small Pamphlet...*, pp. 4-6, 13; Extracts of Minutes of the Convention of Westminster, Jan. 15, 1777, *Connecticut Courant*, April 28, 1777.

48 *Cal. of Coun. Min.*, p. 471; Council Minutes, XVI, 53; Testimony of

The local authorities seemed to be unable to cope with a rapidly developing dangerous situation. Warrants for the arrests of the leaders proved futile.⁴⁹ On June 19, the Council advised application for military aid to suppress the disorder.⁵⁰ The next day a proclamation was issued offering a reward for the arrest of Dutchess leaders on charges of high treason.⁵¹ To give it force, the same day the Twenty-eighth Regiment was on its way from Albany to Poughkeepsie. Apparently, the militia, composed of sympathetic small farmers, was not dependable.⁵² The civil authorities of Dutchess County were ordered "to dispose of and employ the troops to be sent to said county for the purpose of quelling disturbances."⁵³

But still the rebellions spread. Even Connecticut was affected. In June it was rumored that "4,000 people in Connecticut entered into agreement & signed to make an equal dividend of property there."⁵⁴ This levelling movement was bound up with anti-creditor sentiment which about seventy farmers of Wallingford expressed in their petition that the County Court at New Haven give no judgments on debt actions.⁵⁵ In this

Ten Broeck and of James Livingston, *King v. Prendergast*, "Notes on July Assizes."

⁴⁹ June 7, 1766, "... a warrant for the arrest of Silas Washburn, William Pendergrast, James Secord, Elisha Cole, Isaac Perry, Michael Veal. — for traitorous conspiracy ...," *Cal. of Coun. Min.*, p. 471.

⁵⁰ *Ibid.*, p. 471.

⁵¹ *Cal. of Hist. Mss*, II, 763. It named Jacobus Gonsales in addition to those in n. 49. Original broadside in Redmond-Livingston Mss.

⁵² *Cal. of Coun. Min.*, p. 471; General Gage to Conway, June 24, 1766: "This Requisition of Troops is approved of by every Branch of the Legislature, for they find their Militia is not to be depended upon, and the Rich and most Powerfull People of the Province are most affected by the Proceedings of the Confederates." Carter, C. E., *Correspondence of Thomas Gage*, I, 95.

⁵³ *Cal. of Hist. Mss*, II, 763.

⁵⁴ Entry for June 24, 1766, *Montresor Journals*, p. 375.

⁵⁵ Since the petition concluded with a minatory tone the petitioners "were sent for in Custody, and as they did not all readily obey the Summons, the Militia was ordered to be raised, but the People of the Place being generally offended with the Petitioners, they thought proper voluntarily to sur-

respect the Connecticut movement was strikingly different from the New York disturbances where Prendergast insisted that all debts except those for rent be paid in full though execution was to be levied upon the appraised property of the debtor and not upon his person.⁵⁶ On June 26, Harmanus Schuyler, the Sheriff of Albany County, going with a posse of 105 men to dispossess disgruntled settlers on Van Rensselaer land who had taken Stockbridge titles and to arrest their leaders, met an armed band of sixty.⁵⁷ In the skirmish the embattled farmers were dispersed, but Cornelis Ten Broeck was killed and seven other militia wounded. The posse's opponents suffered the loss of three killed, including Thomas Whitney, one of their leaders, and many wounded, including Robert Noble, prominent in outbreaks of the previous decade, who made his escape. The survivors took refuge in Noble's house, from which they continued their resistance. In vain did the Sheriff go to Poughkeepsie to get the assistance of the troops; for when he got there he found that they had gone off to Prendergast's home on the Philipse Patent.⁵⁸

Meanwhile dispatches from Livingston Manor told of another uprising in which about two hundred men "marched to murder the Lord of the Manor and level his house, unless he would sign leases for 'em agreeable to their form, as theirs

render themselves (except two or three of the Contrivers, who absconded) and submit to the mercy of the Court..." *Pennsylvania Gazette*, July 17, 1766.

56 "Notes on July Assizes," especially the testimony of Ebenezer Weed and of Samuel Towner, *King v. Prendergast*.

57 *The Poughkeepsie Eagle*, May 17, 1856, has an historical account of early anti-rentism. It speaks of 200 who purchased Stockbridge titles. Cf. *Boston Gazette or County Journal*, July 14, 1766.

58 *New York Gazette*, July 7, 1766; *Doc. Hist. of N. Y.*, III, 830-1; Sir William Johnson to Lords of Trade, June 28, 1766, in which he probably referred to this episode when he mentioned an anti-rent riot against a posse in which twenty-four were killed or wounded, *Doc. Rel. to Col. N. Y.*, VII, 838; entry of July 2, 1766, *Montresor Journals*, p. 376; *Boston Gazette or Country Journal*, July 14, 1766; *Pennsylvania Gazette*, July 10, July 17, 1766; *King v. Alexander McArthur, Daniel McArthur, Thomas Johnson, and Levi Stockwell*, "Notes on July Assizes."

were now expired and that they would neither pay Rent, taxes, &c, nor suffer other Tenants." However, they were dispersed, after making dire threats, by an armed band of forty led by Walter Livingston and his son.⁵⁹

A serious crisis had developed by the end of June. At Poughkeepsie 1,700 "levellers" appeared with firearms. Throughout the eastern Hudson Valley up to Albany, jail deliveries were reported to have occurred. Even in Wallingford, Connecticut, seventy debtor-farmers, in sympathy with the above-mentioned anti-creditor petition, entered a court-room, declaring that no writs or processes should be issued for debt, while the Sheriff and his party stood by helplessly.⁶⁰ In the southeastern part of Dutchess near Pawling, a band of 300 rebellious farmers had gathered around Quaker Hill in readiness to attack the regulars that had been sent to crush them.⁶¹

To meet this many-headed danger, the provincial authorities launched a vigorous counter-attack. At the end of June, the Twenty-eighth Regiment landed at Poughkeepsie. Under Major Thomas Brown, it engaged in a skirmish which resulted in the dispersal of the anti-renters and the capture of eight of them.⁶² The resistance to the Sheriff of Albany County on Van Rensselaer property was answered by a proclamation offering a reward for the capture of Noble.⁶³ Meanwhile the troops that had gone off towards Prendergast's home met at Fredericksburgh thirty armed men on their way to join him. The soldiers,

59 Entry for June 28, 1766, *Montresor Journals*, pp. 375-6.

60 Entry for June 29, 1766, *ibid.*, p. 376; Cheyney, in Flick, *Hist. of N. Y.*, VI, 293; see also Colden to Conway, June 24, 1766, *Doc. Rel. to Col. N. Y.*, VII, 832-834.

61 This was on June 30, 1766, *The New York Gazette: or, The Weekly Post-Boy*, July 3, 1766 (hereafter cited as *Weekly Post Boy*); testimony of Peter Terry, *King v. Prendergast*, "Notes on July Assizes."

62 Entry of June 30, *Montresor Journals*, p. 376; *Cal. of Coun. Min.*, p. 471.

63 *Cal. of Hist. Mss*, II, 763; *Doc. Hist. of N. Y.*, III, 830-2; *Cal. of Coun. Min.*, p. 472. Apparently the inhabitants of Nobletown replied to the affidavits of Robert Van Rensselaer and Sheriff Schuyler. *Ibid.*, p. 472; *Correspondence of Thomas Gage*, II, 362-3.

with only three of their own number wounded, routed them so badly that the next day about fifty anti-renters came forward under a flag of truce. These were promptly seized as rebels and imprisoned in the nearby meeting house, over which an armed guard was left.⁶⁴ But Prendergast fearlessly continued the opposition, despite his wife's entreaties that he throw himself on the Governor's mercy. Armed with a cutlass, he vowed that he was determined to "make day Light Shew thro'" anyone who opposed him.⁶⁵ Furthermore, violently compelling a justice of peace, Samuel Peters, and his deputy to take an oath never to arrest him, Prendergast defiantly affirmed that "if the king was there he would serve him so, for kings had been bro't to by mobs before now."⁶⁶ But Prendergast was soon captured, together with seven other leaders. He was taken to a New York prison under guard of regular soldiers. This broke the back of the resistance on Philipse's patent.⁶⁷

These vigorous measures by no means brought quiet to the other turbulent areas. In the middle of July, reports to New York City carried stories of continued rioting in Albany County and at Poughkeepsie.⁶⁸ A fresh detachment of 100 men from the Forty-sixth Regiment was ordered to proceed immediately with two field pieces to Poughkeepsie where the rebels had forti-

64 *New York Gazette*, July 7, 1766; *Correspondence of Thomas Gage*, II, 362-3; French, *op. cit.*, p. 269, n. 3. This is at the present site of Carmel in Putnam County, *The Poughkeepsie Eagle*, May 17, 1856.

65 Testimony of Malcom Morrison, *King v. Prendergast*, "Notes on July Assizes, 1766"; cf. Redmond-Livingston Mss; Hasbrouck, *Hist. of Dutchess*, p. 91.

66 The incident happened on May 27, 1766. Testimony of George Hughson, *King v. Prendergast*, "Notes on July Assizes"; affidavit of Samuel Peters, June 7, 1766, John Tabor Kempe Papers, Lawsuits, P-R.

67 Governor Moore to Conway, July 14, 1766. He described how the civil authorities were forced to call upon the military, and narrated the foregoing action. He gave special commendation to Major Brown. *Doc. Rel. to Col. N. Y.*, VII, 845-846; entry for July 10, 1766, *Montresor Journals*, p. 377; *The Poughkeepsie Eagle*, May 17, 1856.

68 Entries of July 13, 18, and 19, *Montresor Journals*, pp. 377-378.

fied a large house and entrenched themselves.⁶⁹ The Nineteenth Infantry, a company of the Twenty-sixth Regiment, with a detachment of the artillery train and three field pieces embarked for Claverack⁷⁰ where the Van Rensselaers experienced disorders. Apparently the arrest and removal of Prendergast sent a wave of great excitement over Dutchess County which spread through the whole province, wherever small farmers were troubled about the security of their land titles.⁷¹

In the midst of this turmoil and guarded by regular troops, the Supreme Court began its sessions, sitting from July 29th to August 14th.⁷² On the bench sat the chief justice, Daniel Horsmanden, and his associates, John Watts, William Walton, Oliver DeLancey, Joseph Reade, William Smith, Whitehead Hicks, and John Morin Scott. All of these were amongst the greatest landlords and land speculators of the colony; at least two of the judges, if we include Justice Robert R. Livingston who was present though not sitting, were related to the landlords against whom the prisoners had rebelled.⁷³ About sixty to seventy men were indicted for riotous assault, and some for the additional charge of rescuing prisoners. They pleaded guilty and were variously punished with fines, imprisonment, and pillories.⁷⁴

69 Entries of July 19 and 21, 1766, *ibid.*, p. 378; *New York Gazette*, July 21, 1766 and *Weekly Post-Boy*, July 24, 1766. Both newspapers say 200 men were sent.

70 *New York Mercury*, July 28, 1766.

71 *The Poughkeepsie Eagle*, May 17, 1856.

72 *Montresor Journals*, p. 379; *New York Mercury*, July 28, 1766; *New York Gazette*, Sept. 1, 1766; *Weekly Post-Boy*, Sept. 4, 1766. Moore wrote to Conway, July 14, 1766, that two companies of the Regiment were left to guard the prison. *Doc. Rel. to Col. N. Y.*, VII, 845-6.

73 Werner, *Civil List and Constitutional Hist. of N. Y.*, p. 388; *New York Mercury*, July 28, 1766; *New York Gazette*, Sept. 1, 1766; *Weekly Post-Boy*, Sept. 4, 1766; *Pennsylvania Gazette*, July 31, 1766. See above, note 9. for Smith's relationship to Livingston. Robert R. Livingston, an associate judge since March 16, 1763, though not sitting, was present at these trials and no doubt especially disturbed by the Livingston troubles.

74 *New York Gazette*, Sept. 1, 1766. For example, Daniel Townsend and Samuel Goodspeed, indicted for riot and assault, and for rescuing John Way,

Prendergast's trial, which lasted twenty-four hours, attracted wide public attention. He had been brought up from New York under heavy guard to stand trial on a charge of high treason.⁷⁵ Brought before the court on August 6, the prisoner found his situation aggravated by the fact that one of the regulars had died of a wound inflicted by one of the rebel's followers.⁷⁶ Tension ran high throughout the country-side, since it was common knowledge that he was no ordinary criminal but a "sober, honest, and industrious Farmer much beloved by his neighbors,"⁷⁷ who had accepted leadership because "he pitied poor people who were turned out of possession."⁷⁸ Prendergast boldly conducted his own defence assisted by his wife, Mehitabel Wing, who attracted a great deal of attention. To counteract the evidence against him, "she never failed to make every remark that might tend to extenuate the offence, and put his conduct in the most favorable point of View; not suffering one

were sentenced to one hour in the pillory on August 16. They appeared to be penitent while in the pillory. Jacobus Gonsales, indicted for the same but in addition for marching to rescue Joshua Bishop and Isaac Wright from the jail in New York was sentenced to a £200 fine and three months imprisonment; and Jacob Brill, indicted for the same offenses, received a £55 fine. Many rebels were not included in this trial. Thus names like Samuel and Daniel Munroe, Joseph Crow, Jr., Stephen Wilcox, Jonathan Wright, Daniel Brundige, and William Finch keep recurring on the agenda of cases for vacations down to January 1771. John Tabor Kempe Papers (N. Y. Hist. Soc.), Box IV. See also Kempe's Notes on the Trial of *King v. Elisha Cole* for High Treason, June 13, 1767 at Poughkeepsie, in which the testimony is substantially like that in the trials of 1766. *Ibid.*, Lawsuits, A-B.

⁷⁵ *New York Gazette*, July 28, 1766 and September 1, 1766; *Weekly Post-Boy*, July 31, and Sept. 4, 1766; entries of July 24, and August 6, *Montresor Journals*, pp. 379, 381.

⁷⁶ This was George Henry of the Twenty-eighth Regiment who, languishing in a New York hospital from June 28 to July 27, had his leg amputated, but died on August 1. *Weekly Post-Boy*, August 7, 1766; *Montresor Journals*, p. 380; Attorney-General's opening remarks *King v. Prendergast*, *loc. cit.*

⁷⁷ The account continues, "...and in short, was a good Liver; but was stirred up to act as he did by one Munro, who is absconded." *New York Mercury*, Aug. 25, 1766.

⁷⁸ Testimony of Samuel Peters, James Livingston, *et al.*, *King v. Prendergast*, "Notes on July Assizes."

Circumstance that could be collected from the Evidence, or thought of in his Favour to escape the Notice of the Court and Jury." So effective was she in advising her husband in his defence, that the prosecuting attorney moved to oust her "lest she might too much influence the Jury" by "her very Looks." The court reprimanded the prosecutor and answered that she had not spoken unreasonably and that, if the request were granted, the prosecutor "might as well move that the Prisoner himself should be cover'd with a Veil, lest the Distress painted in his Countenance should too powerfully excite Compassion."⁷⁹

This legal indulgence was of no avail. The jury, "of some of the most respectable Freeholders," brought in a verdict of guilty with a recommendation to the King's mercy. The good wife's behaviour in immediately setting out on horseback for New York to solicit a reprieve from the Governor, covering the distance of 140 miles, there and back, in three days, moved a newspaper to report that she "did Honour to her Sex and the Conjugal State."⁸⁰ After several days the court pronounced its solemn sentence "that the Prisoner be led back to the Place whence he came and from thence shall be drawn on a Hurdle to the Place for Execution, and then shall be hanged by the Neck, and then shall be cut down alive, and his Entrails and Privy members shall be cut from his Body, and shall be burned in his Sight, and his Head shall be cut off, and his Body shall be divided into four Parts, and shall be disposed of at the King's Pleasure."⁸¹ When sentence was passed, the prisoner,

⁷⁹ *Weekly Post-Boy*, Sept. 4, 1766. A note by T. Jones ("Counsel for the King") on the N. Y. Hist. Soc. copy calls the account false.

⁸⁰ *Weekly Post-Boy*, Sept. 4, 1766; *New York Gazette*, Sept. 1, 1766. A newspaper account in which the jury appeared more relentless than the court remarked parenthetically, "... it is said in this, they differ'd from the Opinion of the Court, and were sent back, but persisted in their Verdict." *Weekly Post-Boy*, Sept. 4, 1766. But Jones's note (see n. 79) denies that a directed verdict was made, and the other sources used mention none.

⁸¹ *New York Gazette*, Sept. 1, 1766; *New York Mercury*, August 18 and 25, 1766.

though penitent,⁸² begged leave of the Court to say with considerable insight "that if opposition to the Government was deemed Rebellion, no member of that Court was entitled to set upon his Tryal."⁸³ This was certainly true of John Morin Scott, land speculator and early leader of the Sons of Liberty, who abetted mechanics, artisans, and merchants in the Stamp Act agitation against Great Britain, but condemned small farmers in the anti-rent struggles against landlords.⁸⁴

Throughout the sitting of the court, the small farmers continued their opposition to the landlords. In early August, an application for more troops to suppress them was rejected because of the need of holding them in New York City to prevent Stamp Act "riots."⁸⁵ In Philipse's patent the soldiery fearfully pillaged and plundered recalcitrant farmers. A contemporary left a vivid description:

'Tis beyond the Power of Language to paint in lively Images the Horror! the Surprise and Astonishment of this poor distressed People on that occasion. To see their Habitations, some demolished, some robbed and pillag'd, and others of them invellop'd in Flames of Fire . . . to see them at once, as it had been, in an instant, deprived of all their substance for which they had laboured sweat and fatigued themselves all the Days of their Lives; and thus driven therefrom in such Hostile Manner; and to see others coming in to

82 "When the terrible Sentence was pronounced upon the Prisoner, he utter'd an ejaculatory Prayer to God for Mercy, with such Earnestness, and look'd so distressed that the whole Audience, even those least susceptible to Compassion, were melted into Tears." *Weekly Post-Boy*, Sept. 4, 1766; *New York Gazette*, Sept. 1, 1766.

83 See entry for August 19, 1766, *Montresor Journals*, p. 384.

84 About the time of these troubles, John Morin Scott had dropped out of active leadership, while Isaac Sears and John Lamb had come to the fore. Becker, *Hist. of Political Parties in N. Y.*, pp. 35, 38, 48, 59. On Scott's reluctance to sit as judge. Diary of Wm. Smith, July 22, 1766.

85 Captain Montresor remarked, "They wouldn't be displeased if New York should be again drained of its regular Troops to carry on the old Game which there seems Hope for." Entry of August 4, 1766, *Montresor Journals*, p. 381.

reap the Fruits of their Labours, to reap whereon they had not sowed! . . .⁸⁶

The detachment sent to Claverack finally captured Noble who had previously escaped by flight. It dispossessed many inhabitants unfriendly to the Van Rensselaers and left the remainder in "tolerable Quietness."⁸⁷ Not for long was this the case, for bitterly complaining fugitives took refuge in Massachusetts and Connecticut whence they returned to continue a fierce guerilla struggle for land.⁸⁸ Apparently Massachusetts and the Stockbridge Indians, interested in their own land claims in New York, helped the settlers continue the struggle. By the end of August General Gage reported that the tumults throughout the eastern Hudson Valley had not subsided despite his tactics of placing troops at habitations in order to compel surrender under the threat of destroying the crops.⁸⁹ Governor Moore embarked for Albany in the hope that his presence would have a mollifying effect.⁹⁰

The widespread sympathy for Prendergast left the Sheriff unable to secure anyone to assist in the execution of the sentence notwithstanding his advertisement that the helper "will meet with a good reward, he shall be disguised so as not to be known, and secured from Insults."⁹¹ Perhaps awareness of this feeling induced Governor Moore to grant a reprieve on September 1, until the King's pleasure might be known, and prompted Lady Moore to send money to free all prisoners committed for sums

86 Geographical, Historical Narrative, Vol. 707, fols. 32-33, pp. 18-19.

87 Entry of July 31, 1766, *Montresor Journals*, p. 380; *New York Gazette*, August 11, 1766.

88 Gage to Richmond, August 26, 1766, *Correspondence of Thomas Gage*, I, 102; Gov. Moore to Lords of Trade, August 12, 1766, *Doc. Rel. to Col. N. Y.*, VII, 849-851; *Boston Gazette or Country Journal*, Aug. 18, 1766.

89 Gage to Richmond, Aug. 26, 1766, *Correspondence of Thomas Gage*, I, 102-3; cf. *Doc. Rel. to Col. N. Y.*, VII, 849-851.

90 *New York Gazette*, August 18, and 25, 1766.

91 The execution had been set for September 26, 1766. *Ibid.*, September 1, 1766.

under £30.⁹² One day after the reprieve, a band of fifty horsemen executed a well-planned jail-break; but the prisoner, rather bravely and wisely, chose to remain imprisoned to await the result of the appeal to the King, since escape would mean loss of his property and consequent reduction of his family to poverty and want.⁹³

By the middle of September the turbulence had subsided, though General Gage thought, "the Spirit of Riot was too high amongst the People, to be as yet quite evaporated."⁹⁴ Force had its way. By October, many Poughkeepsie farms, taken from the dispossessed, were sold by the Sheriff.⁹⁵ From Nobletown farmers came a petition to Sir William Johnson regarding the "outrageous treatment" suffered from Colonel John Van Rensselaer, through his determination to eject them from their homes. It begged Johnson's interposition in their behalf.⁹⁶ However the landlords had been put to considerable trouble and expense. They had paid large sums for ejectment proceedings, for hiring retainers, for dining and wining army officers, and for transporting judges, attorneys, juries, and witnesses.⁹⁷ They now exacted a fearful vengeance.

92 *New York Mercury*, Sept. 15, 1766; *New York Gazette*, Sept. 8, 1766; *Weekly Post-Boy*, Sept. 11, 1766.

93 *New York Gazette*, Sept. 29, 1766; *Weekly Post-Boy*, Sept. 25, 1766; *Boston Gazette or Country Journal*, Oct. 6, 1766; *Poughkeepsie Eagle*, May 17, 1856; Hasbrouck, *op. cit.*, p. 92.

94 Gage to Richmond, Sept. 13, 1766, "Insurrections... seem at present totally quelled. The Judges who composed the Special Court of Oyer and Terminer, are returned from those Countys, after trying several Delinquents concerned in the Riots, and making some Examples.... Every thing now wears the Face of Quiet..." *Correspondence of Thomas Gage*, I, 107-108.

95 *New York Gazette*, October 6, 1766.

96 Dated 1766, *Calendar of the Sir William Johnson Mss*, pp. 338-339. The item was destroyed by the fire of 1911.

97 For example, the itemized account of charges in defense of the Highland Patent for Roger Morris, Philip Philipse, and Beverly Robinson from Oct. 2, 1753 to Dec. 6, 1766 was £2081, 18 s. 10 d. This included the defence against the Wappinger claims and the suppression of Prendergast's rebellion. Philipse-Gouverneur Land Titles, no. 20.

The great display of force applied by the colonial government in the suppression of the rebellions of 1766 was by no means favored in all quarters. Even Colden, who was hardly sympathetic to rioters, remarked,

I am far from justifying these riotous Proceedings, I only observe the difference of Sentiment and Zeal in this case and in others where the authority of Parliament was contemned, and the Kings authority was continually insulted, for several months together, by most dangerous Riots, without the least attempt to suppress any of them, but rather with public applause.⁹⁸

Colden was evidently in favor of strong measures against the merchants and lawyers in the Stamp Act riots, and could not see why vigorous action should be applied to support great landlords against the small farmers but withheld against Stamp Act rioters. Furthermore, Colden believed, "The Power of the Civil Authority alone must have been sufficient, had there not been a general Jealousy of a powerful Combination in the Courts of Justice, in favor of the extravagant Claims of the great landed Men."⁹⁹

Somewhat similar in tone was the opinion of General Gage. Attributing the Stamp Act disturbances of 1765 to the "Rich and Most Powerfull People," he believed the anti-rent agitation was a just retribution quite in keeping with the earlier dangerous precedent.

They certainly deserve any Losses they may sustain, for it is the work of their own Hands. Th[e]y first Sowed the Seeds of Sedition amongst the People and taught them to rise in Opposition to the Laws. what now happens is a Consequence that might be easily foreseen after the Tumults about the Stamp Act, and I could wish that this uneasiness amongst the People had happened just at that Time.¹⁰⁰

98 Colden to Conway, June 24, 1766, *Doc. Rel. to Col. N. Y.*, VII, 833; *The Colden Letter Books*, II, 115-6. See also Colden to Sir Jeffery Amherst, June 24, 1766. *Ibid.*, II, 111-112.

99 From the "Conduct of Cadwallader Colden . . . 1767," *ibid.*, II, 456.

100 General Gage to Conway, June 24, 1766, Carter, *Correspondence of Thomas Gage*, I, 95.

We have already noted how John Watts in 1777 advised the British Government to punish rebellious landlords by inciting against them armed yeomen with the prospect of freehold estates and freedom from "vassalage." The same expedient was advised to win Ethan Allen to the British cause. "He may in my opinion," wrote a spy, "be easily tempted to throw off any dependence on the Tyranny of the Congress and made usefull to the Government by giving him and his adherents the property of all the Lands appropriated to Rebels and making that Country a Separate Government dependant on the Crown."¹⁰¹

Quite different was the warning of an anti-British writer. In a widely publicized "letter from a Gentleman . . . to his Friend in Providence," he opposed the use of forceful repression from a view different from that of Colden or of Gage. He admonished that

The hostile preparations, against the occupants of the lands, presages no good to the civil rights of the subject. It is not easy to be comprehended that in a dispute about property, rights of freehold or the like, where there are such numbers of those tenant . . . on one side, that they should all be so absolutely in the wrong as to deserve dragooning. . . . The Landlords . . . have appealed to the army, and have procured a detachment to vindicate their cause by cutting the throats of the adverse party. If such decisions should grow into use amongst us, it would greatly shorten law proceedings, and be the most effectual way of gaining a cause.¹⁰²

Reluctant to call "lawful resistance against the unjust force and violence" a riot, he remarked that it was a "very easy matter for men of wealth and power to brand with odious appellations those, whom they intend to oppress and injure." Unlike John Morin Scott, early leader of the Sons of Liberty,

[101] 101 December 24, 1778, Stevens' Facsimiles, no. 549.

[102] 102 *Weekly Post-Boy*, Aug. 21, 1766. This letter was answered in the September 18th issue of the same paper; also *New York Gazette*, August 18, 1766; *Providence Gazette*, Aug. 9, September 18, 1766; and other papers in Boston and Newport.

who sat in judgment to punish the anti-renters, this writer feared that forceful repression by armed troops was a dangerous precedent which might be extended to the enforcement of an oppressive Stamp Act.¹⁰³ In similar vein was the charge of "Philanthropos," in February 1768, that the tenants had been driven to violence because the law "was absolutely barred against them . . . the lawyers generally refusing to take their cause in hand."¹⁰⁴

Even from across the Atlantic, the Earl of Shelburne, the Secretary of State for the Southern Department, disturbed over the possibility that New York had acted too summarily, wrote, ". . . There is room to apprehend the Sheriff of Albany may have exceeded if not his legal Powers at least the bounds of discretion." He acted favorably on Moore's recommendation of clemency by advising the King to grant a pardon to Prendergast.¹⁰⁵ Prendergast returned to his home amidst great

103 "Perhaps, my dear friend, that whilst we are guarding against danger from abroad, we shall become inattentive to dangers from within our own country. Doth the protecting, defending, and securing America, require an army at New York, in time of peace, or the marching of the garrisons from the frontier posts to put in force an oppressive Stamp Act?" *Weekly Post-Boy*, Aug. 21, 1766; *Providence Gazette*, Aug. 9, 1766. Although no direct evidence has been found, it is questionable whether leaders like Isaac Sears or John Lamb would have taken the position that Scott took on the small farmer uprisings.

104 (Philanthropos), *A Few Observations on the Conduct of the General Assembly of New York, for some Years Past, Addressed to the Freemen and Freeholders of the City and Province* ([N. Y.], 1768), p. 5. This remarkable brochure attacked the act of July 1766 authorizing extraordinary expenses for troops in the field. It suggested galleries for the public to enable the people to watch their representatives in action. It also opposed lawyers in the Assembly in the belief that they would reject land taxes, which were felt to be necessary to lighten the tax burden, and would discontinue the power of the justices of peace to give judgments on small debts.

105 Shelburne to Moore, Dec. 11, 1766, which continues "... His Majesty has graciously pleased to grant him his Pardon, relying that this instance of his Royal clemency will have a better effect in recalling these mistaken People to their Duty than the most rigorous punishment." *Doc. Rel. to N. Y.*, VII, 879; cf. Moore to Shelburne, Nov. 11, 1766, *ibid.*, p. 877; Shelburne to Gage, Dec. 11, 1766, *Correspondence of Thomas Gage*, II, 47; *Weekly Post-Boy*, Feb. 19, 1767.

rejoicing and huzzas for King George, since the pardon, which was hardly expected, was considered a triumph for the occupants of the soil over the landlords.¹⁰⁶ Piqued by Shelburne's criticism, Governor Moore felt called upon to explain "... that I should have been guilty of a neglect of my Duty had I refused the aid required especially in the County of Albany where the rebels had set the civil Power at Defiance, & had defeated the Sheriff at the head of the Posse of the County, by which rash act several lives were lost."¹⁰⁷

With the forceful crushing of their hopes by the autumn of 1766, the rebellious settlers were faced with the alternative of accepting the terms of the landlords or of going elsewhere. Many of them, natives of New England, returned to Massachusetts and Connecticut temporarily, but eventually found their way to the unsettled region that later became Vermont, since the cheap land of their native colonies was almost entirely gone.¹⁰⁸ Vermont towns like Manchester, Danby, Dorset, Panton and Poultney appear to have been settled with immigrants from Dutchess and Westchester Counties. Furthermore, the events of 1766 deflected the tide of New England emigration toward the same region.¹⁰⁹ Even some of the prominent Massachusetts

106 *Poughkeepsie Eagle*, May 17, 1856.

107 Governor Moore to Shelburne, February 24, 1767. He further wrote, "But as it never was the intention of these People to submitt their Title to a legal examanatn every opposition was made to the sheriff when he attempted to do his Duty and matters were carried to such a length, that they assembled armed in a great body, and attacked and defeated him in the Execution of his office, altho' supported by the Posse of the County & some lives were lost on both sides." *Doc. Rel. to Col. N. Y.*, VII, 910-912.

108 *Ibid.*, VII, 849-851, 910-912. O. Handlin has a brief but suggestive discussion of this aspect. *Loc. cit.*, pp. 73-75.

109 Mathews, Lois K., *Expansion of New England*, pp. 115-116, 129, 136; Benton, *The Vt. Settlers and the N. Y. Land Speculators*, p. 21; Handlin, *loc. cit.*, p. 74. See also Joslin, J. and Frisbie, B. and Ruggles, L., *History of ... Poultney*, p. 15, who mention Pixley and Van Deusen. Handlin admits that the evidence is not conclusive. Nevertheless he uses similarities in names and impressions of population growth gotten from J. Lees, *Journal of John Lees ...*, p. 13; William Smith, *History of N. Y.*, I, 311; E. B. Greene and V. Harrington, *American Population before the Federal Census of 1790*, pp. 97, 98, 100, 101, 103; and Hasbrouck, *op. cit.*, pp. 50, 52.

speculators like Oliver Partridge, John Ashley, and Governor Bernard entered these new fields for speculative ventures.¹¹⁰ Yet despite this general trend which bore Micah Vail to Chesterfield, Prendergast remained in New York and Noble, after his escape from arrest, settled in Massachusetts.¹¹¹

During all the disturbances of 1766, Nimham had not accepted the results of the hearing of 1765 passively.¹¹² A delegation of Stockbridge Indians, on the advice of Sir William Johnson, personally carried their case to the Lords of Trade.¹¹³ Meanwhile they aided and abetted the anti-rent riots. In order to block a successful appeal to higher authorities, Governor Moore made every effort to make it appear that the Indians at Stockbridge were "contrivers of these Riots." He complained to the Lords of Trade in August¹¹⁴ that the Indians had sent their chiefs to New York to claim the land formally and to request the expulsion of the New York landlords then in possession. Meanwhile, he charged that this "very despicable Tribe" was giving out titles to the land in question and forcing off those who refused to acknowledge it as landlord.

110 *Cal. of Coun. Min.*, p. 519; Bouton, N., ed., *Documents and Records Relating to the Province of New Hampshire*, VI, 5; *Documents and Records Relating to Towns in New Hampshire*, IX, 814; for Joseph Ashley's petition for Putney, *ibid.*, IX, 716; Handlin, *loc. cit.*, p. 74, n. 62.

111 Micah Vail is mentioned as a resident of Chesterfield, April 8, 1772, Duane Mss, II. For Stephen Wilcox's interest in Newport, see below, p. 167, n. 14. Prendergast received title to his farm in fee in 1771. On May 19, 1774, a deed granted the land in fee "in historical possession for several years past" for a consideration of £137 and quit-rent of £5, 18 s. 1½ d. to the crown officers and 20 s. more. He appears to have sold his land to Humphry Slocum and to have moved to the west. His son, James, settled with other relatives near Chautauqua and founded Jamestown. Philipse-Gouverneur Land Titles, no. 3; Pelletreau, *op. cit.*, p. 654; Hasbrouck, *op. cit.*, pp. 92, 391; Alexander, *James Duane*, p. 45, n. 26; Wilson, W. H., *Quaker Hill A Sociological Study*, p. 54.

112 On March 6, 1765. *Vide supra*.

113 Reports of Lords of Trade, Aug. 30, 1766, *Doc. Rel. to Col. N. Y.*, VII, 868-870; Geographical, Historical Narrative, fol. 33, pp. 19-20.

114 August 12, 1766, *Doc. Rel. to Col. N. Y.*, VII, 849-851.

The Lords of Trade, after considering all the pertinent records dealing with the complaint of the Indians, concluded that there was "foundation for further examination into the state of facts and proceedings upon which the Complaint" was grounded. They further stated "that the Conduct of the Lieutenant-Governor [Colden] and Council of New York, in directing prosecution against the Guardian, Agents, and Protectors of these Indians, upon the Grounds set forth in the Committees Report does carry with it unreasonable Severity, the Colour of great Prejudice & Partiality and of an intention to intimidate these Indians from prosecuting their claims."¹¹⁵

Shelburne took this report seriously for in October he declared that the Indians had been defrauded of 200,000 acres of land. Affirming the reasons stated by the Lords of Trade, he ordered, "in a strongest manner," a further investigation in behalf "of those Unhappy People, whose Distresses have driven them so far."¹¹⁶ In November, he wrote to the New York Council to the same effect. Governor Moore made another effort to prejudice the Indians' case. In a letter to Shellburne on December 22, 1766, he described his efforts to do them justice. But apparently they refused to have their affairs examined by him, the Governor maintained, and the last he heard of them was "that they have been turning some poor people out of Possession of their Houses, and had [a] second time begun committing Disorders" where the riots of 1766 had occurred.¹¹⁷ Furthermore, he impugned the character of the guardian and agents of the Indians by citing their jail records.

Thanks to the persistence of Shelburne, Nimham's application to the Council for a further hearing was approved in January 1767.¹¹⁸ Governor Moore, who had already shown his

115 Report dated August 30, 1766, *ibid.*, VII, 870.

116 Shelburne to Moore, October 11, 1766, British Museum, Add. Mss, Vol. 12,440, fols. 31-32. Cf. Geographical, Historical Narrative, fol. 33, p. 20.

117 *Doc. Rel. to Col. N. Y.*, VII, 885-886.

118 Application heard on January 3, 1767; and hearing appointed, January 7, 1767, *Cal. of Coun. Min.*, p. 473.

prejudice against the Indians, acted¹¹⁹ with the Council as a court for the hearings. The Indians vainly urged Moore to decide the matter without the Council since "most if not all the Gentlemen of the Council, were either Interested in the Lands in Controversy [*e.g.* Roger Morris], or in other Lands which lay under Similar Circumstances."¹¹⁹ Certainly the Council, made up of the largest landowners of the colony, some of whom, like William Smith and William Alexander, were related to those whose lands the Indians claimed, was predisposed toward favoring Philipse, Morris, and Robinson.¹²⁰

Before such a court, the Wappingers conducted their hearing without even the benefit of a New York attorney.¹²¹ Fortunately they secured the services of a Connecticut sympathizer, Spaulding, and of another Connecticut attorney, Marsh. But at the hearings on March 5 and 6, these attorneys proved helpless against the weighted court and the legal talent of Livingston, John Morin Scott, and James Duane.¹²² After arguments that were substantially similar to those of the hearing in 1765, including the brow-beating and discriminatory features of that hearing itself,¹²³ judgment was rendered against the Indians

119 Geographical, Historical Narrative, fol. 36, p. 26.

120 The Councilors who were present at this hearing were Daniel Horsmanden, William Smith, John Watts, William Walton, Oliver DeLancey, Charles Ward Apthorpe, Joseph Reade, and Roger Morris. Morris did not sign the final decision. Sir William Johnson, who might have befriended the Indians, George Clarke, Jr., William Alexander, and Cadwallader Colden were absent. *Ibid.*, fol. 33, p. 27; fol. 51, 55; Werner, *Civil List and Const. Hist. of N. Y.*, p. 409. See above for Livingston's and Van Rensselaer's involvement in the issue raised in this case, and William Smith's relationship to the Livingston family. William Alexander had in 1748 married Sarah Livingston, the daughter of Philip, the second lord of Livingston Manor, and sister of the third lord. Lawrence, Ruth, *Colonial Families of America*, XI, 17.

121 Witnesses called February 4 and 17, 1767, *Cal. of Coun. Min.*, p. 473.

122 *Ibid.*, p. 473; Geographical, Historical Narrative, fols. 33-50, pp. 20-54.

123 For example, Samuel Munroe, a witness friendly to the Indians, was subpoenaed but arrested before he could testify. Bartlet Brundage was placed under oath and virtually dared to say the previous trial was unfair, which he bravely did. Geographical, Historical Narrative, fol. 38, p. 30; fol. 42,

on March 11, 1767.¹²⁴ Despite the evidence that seemed to prove "plentifully" that the land was never alienated to Adolph Philipse, this judgment made it impossible for the Indians to seek a trial at law for the issue of title.¹²⁵ Apparently Spaulding made a futile attempt to induce Sir William Johnson, who had previously written Shelburne that the Wappingers had "formerly been greatly over reached," to carry the matter to Great Britain once more.¹²⁶ But no further efforts against the judgment appear to have been made.

The cessation of active strife after 1766 by no means ended the hatred that the small farmer bore the great landlords of Livingston Manor, Philipse Patent, and Rensselaerswyck. The freeholders of Livingston Manor who had elected a representative of the Livingstons for over forty years, turned against the family in the election of 1768. Robert R. Livingston realized that his chances were slim and gave up before half of the votes had been cast. Colden states that "the general cry of the people both in town & country was *no Lawyer in Assembly*." In February 1768, "Philanthropos," expressing his sympathy for tenant victims of the anti-rent controversy, implored his readers not to give their votes to lawyers.¹²⁷ Perhaps this reflected the feeling of the small farmers who felt that they had been ill-used in ejectment proceedings and during the trials of 1766. They certainly could bear no love toward a family that frequently resorted to distrains and that commonly in-

p. 37. A copy of briefs, Land Papers, XXII, 139; XVIII, 128; Philipse-Gouverneur Land Titles, no. 13; see also Ruttenber, *Indian Tribes of Hudson's River*, pp. 329-330; Pelletreau, *op. cit.*, pp. 79-82.

124 *Cal. of Coun. Min.*, p. 473; Geographical, Historical Narrative, fols. 50-51, pp. 54-55; *Weekly Post-Boy*, March 19, 1767.

125 Geographical, Historical Narrative, fol. 37, p. 28; fol. 49, p. 52; fol. 51, pp. 55-56.

126 March 24, 1767, *Cal. of Sir William Johnson Mss.* p. 349. The original was destroyed in the fire of 1911. Cf. Johnson to Shelburne, Jan. 15, 1767, *Doc. Rel. to Col. N. Y.*, VIII, 891-92.

127 Colden to Hillsborough, April 25, 1768, *Colden Letter Books*, II, 168. (Philanthropos), *A Few Observations on the Conduct of the General Assembly*, pp. 5-6.

structed its agents to deal severely with tenants.¹²⁸ In a typical vein, Robert G. Livingston wrote, "By no means let him stay on the place, Drive him off as soon as possible, I would rather the farm Should Stand Idle than Suffer Such a Sott to stay on it!"¹²⁹

The political significance of this situation was great. It favored a DeLancey political land-slide in the Assembly. The Livingston family had fallen into evil days. Philip Livingston, chosen from the Manor, was rejected by the Assembly in 1769 because he did not reside there.¹³⁰ Judge Robert R. Livingston lost his seat from Dutchess in 1768, and failed to regain this seat in the election of January, 1769 "owing to all the tenants of Beekman & R. G. Livingston's voting against him," it was said.¹³¹ Furthermore, when he was elected five times to represent the Manor he was barred each time by a ruling that made provincial office holders ineligible.¹³² Indeed, it was not until 1774 that the Livingston family sat for the Manor once again.¹³³

In the decade preceding the Revolution, conditions on the Philipse Patent and Rensselaerswyck bred a disgruntled tenantry. Ejectment proceedings continued to bring hardship to dispossessed tenants.¹³⁴ A traveler in 1769 observed, "The Ten-

128 *James Jackson ex dem Robert Livingston v. John Stiles, Frederick Kalf*, Ms Minute Book of the Supreme Court, 1766-69, p. 624; *ibid.*, 1769-72, p. 53. Spaulding, *New York in the Critical Period*, pp. 64-5.

129 R. G. Livingston to Gilbert Livingston, Feb. 8, 1773, Gilbert Livingston Papers (N. Y. P. L.).

130 Alexander, *James Duane*, pp. 46-47; Becker, *Hist. of Pol. Parties in N. Y.*, pp. 18, 26, 59, 63-75; Stokes, *The Iconography of Manhattan*, IV, 783-793; Jones, T., *History of New York during the Revolutionary War*, I, 17-19. R. R. Livingston lost his seat in the Assembly in 1768. *D. A. B.*, XI, p. 320; Livingston, *Livingstons of Livingston Manor*, pp. 178-9, 181-6.

131 P. R. Livingston to P. Schuyler, Feb. 27, 1769, Schuyler Papers.

132 Colden to Hillsborough, Feb. 21, 1770, *Colden Letter Books*, II, 208-9; *Journal of General Assembly of N. Y.*, May 12, Nov. 24, Dec. 12, 21, 1769; Jan. 19, 23, 26, 1770; Jan. 25, 1771; Feb. 5, 1772; Feb. 21, 1774; *Journal of Leg. Council of 1691-1775*, II, 1734; Livingston, *op. cit.*, pp. 186-192.

133 Alexander, *op. cit.*, p. 47; Livingston, *op. cit.*, p. 192.

134 *James Jackson ex dem Roger Morris et al. v. Samuel Munroe* (1770 and 1773); *James Jackson ex dem Catherine Van Rensselaer v. John Stiles*

ant for Life here tells me he pays to Col. Philips only £7 per Annum for about 200 acres of Land & thinks it an extravagant Rent because on his demise or Sale, his Son or Vendee is obliged to pay the Landlord one Third of the Value of the Farm for a Renewal of the Lease.”¹³⁵ Little wonder that Philipse tenants sought the better terms offered in the New Hampshire Grants. In March, 1769 the farmers of Kinderhook petitioned Governor Moore to draw commissions in the militia so as not to create a presumption in favor of the Van Rensselaer claim to the area.¹³⁶ Since the words, “Regiment (for that) Part of the Manor of Renslaer that lies at Claverack,” drew so many objections, these commissions were finally withdrawn.¹³⁷ So opposed to the Van Rensselaers were the farmers that in June 1769 Henry Van Schaack assured Sir William Johnson a following of seven-eighths of the population of the county if he ran in opposition for office.¹³⁸ Before the Revolution only in Westchester County did the condition of tenure for the small farmer seem to improve.¹³⁹

Albert and Cornelius Hingerlandt (1772); also against *Coenrat Swart* (1774), *Moll Gardiner* (1774), *Jacob Ball* (1774), *Jacob Witeman* (1774); *James Jackson ex dem John Van Rensselaer et al. v. Nathaniel Colver* (1772); also against *Ebenezer Cady* (1767), *Thomas Whitney* (1767), *John McKinster* (1773), *Edward Blackman* (1773), *Bartholomew Heth* (1774), *Moses Gilbert* (1774); and *Peter Quiet ex dem Catherine Van Rensselaer v. Robert Stout, Johannis Deitz* (1774). See parchment judgment rolls in the Hall of Records, New York City.

135 Smith, Richard, *Tour of Four Great Rivers*, 1769, p. 5.

136 *Calendar of Johnson Mss*, p. 420; *The Papers of Sir William Johnson*, VII, 678-80. For trial of the Van Rensselaer title to Claverack, see “Notes of Evidence, with Some Notes of the Arguments of Counsel . . . King against John Van Rensselaer, for an Alleged Intrusion . . . 1768” (N. Y. Hist. Soc.). The jury gave the verdict to the defendant, though on June 29, 1773, a jury in an Albany Circuit, according to these notes, took the opposite view. See above, pp. 36-7, n. 87.

137 Jan. 31, 1770, *Cal. of Coun. Min.*, p. 480.

138 *Cal. of Johnson Mss*, p. 427; also p. 485; *The Papers of Sir William Johnson*, VII, 23-24; also VIII, 100-101. Cf. *Memoirs of Henry Van Schaack*, pp. 9-10.

139 Scharf, *Hist. of Westchester*, I, 178-9; Spaulding, *N. Y. in the Critical Period*, pp. 67, 68. These authorities unfortunately cite no primary sources

That Van Schaack should find Sir William Johnson popular in a region that had a large number of rebellious small farmers is by no means strange. Throughout the anti-rent controversies the aid of the patron of the Mohawks was, as has been shown, frequently invoked by the Indians and the settlers who accepted Indian titles against the rival claims of Livingston, Van Rensselaer, and Philipse. Van Gelder's release from prison in 1757 and Nimham's appeal to the Crown in 1767 were at Johnson's instance. In addition to his role as protector of the Indians against land frauds, he had another reason for siding with his charges, and hence with their yeoman grantees and tenants. He could not overlook the fact that Philip Livingston's fraudulent title propped Klock's claim to Canajoharie upon which he had his own ambitious designs.¹⁴⁰ Perhaps his opposition to the Livingstons and Van Rensselaers, to some extent, conveniently accommodated itself to his bitter feud with Peter Schuyler, whose family tree crossed those of Johnson's other opponents.¹⁴¹

After 1766, the boundary dispute between Massachusetts and New York was no longer an occasion for the expression of social discontent. Both colonies kept insisting on their respective rights, but both recognized the necessity of compromising in accordance with the desires of the British authorities.¹⁴² Indeed the basis of such a compromise had been suggested by the Lords of Trade which had recommended a twenty mile line

for the improvement of conditions in Westchester County. I have made fruitless search to find pertinent Westchester leases or deeds, in addition to the few used in Chapter II, through the index at the Register's Office at White Plains, and through other means. Cf. pp. 69-71, 137.

140 *Vide supra*, pp. 38-41, 128, 150, 155.

141 Pound, *Johnson of the Mohawks*, pp. 129-130; Lawrence, *Colonial Families of America*, XI, 14, 20, 109; Van Rensselaer, K., "The Van Rensselaer Manor," *Publications of Order of Col. Lords*, no. 21, pp. 40, 42, 44, 62; Schuyler, M., "The Schuyler Family," *ibid.*, no. 16, p. 11. Johnson's later friendliness with DeLancey seems to be in line with the DeLancey-Livingston antagonism. Stone, *Life and Times of Sir Wm. Johnson*, I, 243, 416-417, 475.

142 Cf. *Report of the Regents on the Boundaries of N. Y.*, I, 74, 209 *et seq.*; II, 153 *et seq.*; Pope, *loc. cit.*, pp. 78-82.

in 1757.¹⁴³ The problem that remained, after the two colonies had accepted this principle, concerned whether the line should be drawn twenty miles parallel to the general course of the Hudson or whether it should be twenty miles due east.¹⁴⁴ Naturally, since both colonies were interested in the greatest possible share of disputed land, New York favored the former whereas Massachusetts favored the latter.

The feeling that the uprisings of 1766 were related to the boundary dispute made settlement all the more necessary.¹⁴⁵ Shelburne urged Moore to attend to the matter;¹⁴⁶ Moore pressed his Council.¹⁴⁷ After interminable haggling over the placement of the line, the authority of commissions, and the details of survey,¹⁴⁸ an agreement was reached at Hartford in May, 1773.¹⁴⁹ But again arguments over details of survey brought the work to a halt. Finally, after renewed efforts at settlement, Massachusetts petitioned Congress for a federal commission which ran a line in 1787.¹⁵⁰

143 *Vide supra*, p. 128, n. 123. See representations of the Council to Gov. Monckton, June 25, 1763, *Colden Letter Books*, I, 238-245. Colden seemed more insistent on New York rights in a letter to the Lords of Trade, January 20, 1764, *Report of the Regents on Boundaries of N. Y.*, II, 153-154.

144 Cf. *ibid.*, II, 158-68.

145 This was Horsmanden's view, in an address, *New York Mercury*, November 24, 1766; *New York Gazette*, November 17, 1766.

146 Shelburne to Moore, Dec. 11, 1766, "In the meantime it will be your care that the Inhabitants lying Westward of the Line reported by the Lords of Trade as the Boundary of the two Provinces be not molested on account of the Territorial differences," *Doc. Rel. to Col. N. Y.*, VIII, 879.

147 Nov. 18, 1767, *Journal of Leg. Council*, II, 1623. A committee had been empowered to settle the affair, June 6, 1767, *Colonial Laws of N. Y.*, IV, 948-9.

148 For wrangling at New Haven, Oct., 1767 and later, see *Report of Regents on Boundaries*, II, 168-175. For New York report expressing doubt of power of Massachusetts commissions, Oct. 14, 1767, *ibid.*, II, 158 *et seq.* Cf. also *Colonial Laws of N. Y.*, IV, 995-6; V, 522-3.

149 This was soon followed by a bitter dispute over Major Hawley's compass; stakes were used which the Massachusetts commissioners later rejected. *Report of Regents on Boundaries*, I, 210-211; II, 177-179.

150 *Journals of the Continental Congress, 1774-1789*, XXVII, 547-550; Massachusetts petition, June 3, 1784, *Report of Regents on Boundaries*, II,

After 1766, the boundary dispute between New York and New Hampshire was of much greater significance for it was inextricably intertwined with the land disputes of rival speculators and settlers.

177-179. The line was run between July 19 and August 4, 1787, *ibid.*, II, 205-212. For acts authorizing Congress to run the line, *Laws of the State of New York, 1777-1801*, II, 57-59, 298; *Report of the Regents on Boundaries*, II, 191-195. Clinton announced the settlement, Jan. 11, 1788, *ibid.*, II, 216-217.

CHAPTER VI

YORKERS *v.* YANKEES

IN the decades before and after the Declaration of Independence a bitter struggle was waged over the region that now comprises Vermont.¹ The struggle over this region, the bone of contention for New York and Yankee land speculators, naturally involved the small farmers who settled the disputed area.² The bulk of them were attracted there by the easier terms generally offered by those who made title through New Hampshire claims, which overlapped pretensions of New York. The New Yorkers tried to keep the dispute in their own courts. Here they could exploit to fuller advantage what they believed to be a better legal case.³ But when it served their interests, they did not hesitate to disregard the specific instructions from the home Government or to aid and abet the maintenance of New York authority by force. On the other hand, the Yankee speculators, able to muster large numbers of settlers, placed their chief reliance upon bands of armed frontiersmen, the renowned Green Mountain Boys. Violent suppression of the Yorkers, diplomatic maneuvers in the Continental Congress, and strategic dickering with Britain during the Revolution eventually won for the Yankees recognition not only of their land claims but also of the independence of the state of Vermont.⁴

1 At the time it included Gloucester, Cumberland and part of Charlotte and Albany Counties of New York. "The struggle between Yorker and Yankee speculators influenced and at times dominated the politics of New York for almost half a century." Alexander, *James Duane*, p. 68.

2 See Yates, Abraham, Jr., Yates Papers, Box V (N. Y. P. L.), "Notes Concerning the Early History of New York 1601-1761," pp. 34-35 (typed copy of Ms).

3 Alexander, *op. cit.*, pp. 91-92; Jones, *Vermont in the Making*, p. 206.

4 Much material on the New Hampshire Grant controversy has already been presented in more or less detail by the following: Hall, Benjamin H., *Hist. of East Vt.*; Hall, Hiland, *Hist. of Vt.*; Wardner, H. S., *The Birth-place of Vermont: A History of Windsor to 1781*; Wilbur, James B., *Ira*

The struggle for land conducted by militant yeomen and Yankee speculators against New York interests cannot be understood without first examining the New York-New Hampshire boundary controversy and the rival land grants. In these respects, the New Hampshire Grant controversy was cast in the same mould as the struggle over Massachusetts grants.⁵ But whereas in the earlier controversies we have described, Yankee and Indian claimants appear as interlopers, disturbing pre-existing landlord-tenant relations, in these conflicts the New York speculators appear, at least to most of the settlers, as intruders affecting similar relations derived through the New Hampshire grants. Yet both conflicts were occasioned by a boundary dispute. The basis of the New York claim was the grant to the Duke of York in 1664 conferring "all the land from the west side of Connecticut River to the East side of De La Ware Bay."⁶ There was little occasion for New Hampshire to take issue with this claim until its Governor, Benning Wentworth, began to grant charters in 1749 to pioneer townships.⁷ In a letter to Governor Clinton, November 17, 1749,

Allen, Founder of Vermont 1751-1814; Benton, Vt. Settlers and N. Y. Land Speculators; Middleton, Lamar, Revolt U. S. A. (N. Y., 1938), pp. 123-154; Pell, J., Ethan Allen; Jones, Vermont in the Making.

⁵ See above, pp. 116 ff.

⁶ *Report of Regents on Boundaries of N. Y.*, I, 10, 22. See above, p. 116.

⁷ Bennington, chartered on Jan. 3, 1749, headed the list of Wentworth charters in the region. It is unnecessary to go into the merits of the controversy. The Vermont view has been presented by the following: Allen, E., *A Vindication of the Opposition of the Inhabitants of Vt. . .*; Allen, E. and Fay, J., *A Concise Refutation of the Claims of N. H. and Mass.-Bay to the Territory of Vt. . .*; Allen, I., *Miscellaneous Remarks on the Proceedings of N. Y. against . . . Vt. . .*, reprinted in Vt. Hist. Soc., *Collections*, I, 109-144; Allen, I., *A Vindication of the Conduct of the General Assembly of the State of Vt. held at Windsor in Oct. 1778*; Benton, *op. cit.*, pp. 62-71, 76, 80. Yet none of the grants to New Hampshire specifically include the land claimed. See Poore, *The Federal and State Constitutions*, II, 1270-1279; Paullin, *Atlas of the Historical Geography of the United States*, pp. 30, 73 plate 43A, 44D, 97B. The New York view has been presented by the following: Duane, J., *State of the Evidence and Argument in Support of . . . N. Y.*, in N. Y. Hist. Soc., *Collections*, 1870, pp. 1-144; Duane, J., Scott, J. M. and Benson, E.,

Wentworth set forth his power to grant lands up to the adjoining colony and asked Clinton for the extent of New York's eastern boundary.⁸ Governor Clinton's response of April 9, 1750, for the first time informed New Hampshire of New York claims to all land west of the Connecticut River.⁹ Nothing daunted, Wentworth, impelled by the desire to collect fees, continued to sell townships until the end of 1764 by which time about 135 had been laid out six miles square, for which he collected about \$13,800 in fees.¹⁰

The grants of Wentworth, like those subsequently made by New York governors, were made chiefly to New England non-resident speculators, friends and relatives (himself as well), who were anxious to sell again.¹¹ These included Captain Samuel

Collection of Evidence in Vindication of the Territorial Rights... of N. Y. against... Mass. and N. H. and... Vermontereers, in N. Y. Hist. Soc., *Col. lectures*, 1869, pp. 277-528; Duane, J., *A Narrative of the Proceedings Subsequent to the Royal Adjudication, Concerning the Lands to the Westward of Connecticut River...*; Duane, J., *A State of the Right of the Colony of N. Y., with Respect to its Eastern Boundary...*; "The Attorney-General's Report on a Petition to His Majesty lately Circulated on the Laws within This Province Formerly Claimed by New Hampshire," March 7, 1771, and many other manuscript briefs in the John Tabor Kempe Papers (N. Y. Hist. Soc.); Jones, *Vermont in the Making*, esp. pp. 23-24, 28, 30, 34, *et seq.* The Order of July 20, 1764, extending colonial New York to the Connecticut River, has recently been sustained in *Vermont v. New Hampshire*, 289 U. S. 593 (1932).

8 *Doc. Hist. of N. Y.*, IV, 531-7; Slade, Wm., ed., *Vermont State Papers*, pp. 9-13; Wardner, *The Birthplace of Vermont*, pp. 10-17.

9 Hall, H., *Hist. of Vt.*, p. 55. Apparently Clinton's proclamation of July 28, 1753, applied solely to Massachusetts intrusion on Livingston Manor and not to New Hampshire. *Ibid.*, p. 76, n. 1; *Doc. Hist. of N. Y.*, III, 751; IV, 753; *Doc. Rel. to Col. N. Y.*, VIII, 381.

10 Wentworth acquired about 100,000 acres by retaining 500 acres on each grant in the region. Mayo, L. S., *John Wentworth, Governor of New Hampshire, 1767-1775*, p. 21; Crockett, W. H., *Vermont the Green Mountain State*, I, 182; Wardner, *op. cit.*, p. 48; Jones, *Vermont in the Making*, p. 25. On Wentworth's sale of townships, see Hall, B. H., *op. cit.*, I, 93; Jones, *op. cit.*, pp. 37-39, 42. Colden wrote to the Board of Trade, Jan. 20, 1764, that in 1750 Wentworth and Clinton had agreed to avoid dispute until the King showed his opinion. *Colden Letter Books*, I, 285. See also Keys, *Cadwallader Colden*, pp. 88-89.

11 These included Portsmouth, Hinsdale, Brattleboro, Dummerston, Putney,

Robinson, Jonathan Hunt, Colonel Josiah Willard, Richard Wibird, a member of the New Hampshire Council, Theodore Atkinson, the governor's father-in-law and the secretary of his Council, Meshech Weare, John Wentworth, the governor's nephew, and Benning Wentworth, himself.¹² For example, Colonel Josiah Willard promoted the town of Windsor for which the charter was printed in blank, with spaces for later entry of names, number of shares, date of first meeting, officers, and exact boundaries. Only three of the fifty-nine proprietors ever settled there; of the twenty-three people who finally, by 1767, came to own land within the town, only three were original petitioners.¹³ Yet these practices by no means discouraged settlement in the whole region. By 1766, more than 500 settlers found homes west of the Connecticut River. Many of them, like Micah Vail, and Stephen Wilcox, were disgruntled tenants from eastern Dutchess who preferred New Hampshire titles.¹⁴ In 1771, the region that subsequently became Vermont had about 7,000 inhabitants.¹⁵

Westminster, Chester, Halifax, Guilford, Springfield, Weathersfield, Windsor, Hartford, Rockingham. *Records of the Council of Safety and Governor and Council of the State of Vermont*, VIII, 364-6.

12 Benton, *op. cit.*, pp. 8-9, 16, 17, 19, 22. Others were Benjamin Ferris from Dutchess, Edward Burling and Thomas Willis from Westchester, and even prominent New Yorkers like Philip Schuyler, Cornelius Low, and Thomas Alsop. *Ibid.*, p. 17; Crockett, *Vt. Green Mt. State*, I, 183-5; Jones, *op. cit.*, chaps. I-II, esp. pp. 25, 44, 46, 50.

13 Woodard, F. M. T., *Town Proprietors in Vermont*, pp. 50, 61, 63-4; Livermore, Shaw, *Early American Land Companies their Influence on Corporate Development*, p. 28. For other towns, Jones, *op. cit.*, p. 59.

14 April 8, 1772, Duane Mss, II. Wilcox's interest in Newport appears in the "List of Townships that Were Forfeited in New Hampshire for Non-Settlement . . . 1767-1772," John Tabor Kempe Papers, box including N. H. Grants. New York claimants tried to minimize their number; thus Simon Stevens and Samuel Wells claimed that there were only 70 squatters east of the mountains. *Doc. Hist. of N. Y.*, IV, 693, 696, 697, 701; cf. Jones, *op. cit.*, pp. 64, 82-88.

15 Vermont comprised Cumberland, Gloucester, and part of Charlotte and of Albany. The figures for these first three counties, about 1771-2, are cited as 3,947; 722; and 2,645, respectively. Sutherland, *Population Distribution in Colonial America*, p. 70; Mathews, *Expansion of New England*, p. 117; *Census of the State of New York for 1855*, p. vii.

To forestall a *fait accompli*, Lieutenant-Governor Colden vigorously championed New York's claims. Setting aside a recommendation of a New York committee which urged the continuance of the twenty mile line, he maintained that neither Massachusetts nor New Hampshire extended west of the Connecticut River.¹⁶ He warned the Board of Trade that if the New York claims were given up "the Crown would be deprived of a Quit rent, amounting yearly to a large sum" and the "republican" principles of New England would be extended.¹⁷ On December 28, 1763 he proclaimed the Connecticut River to be the eastern boundary of New York and enjoined the sheriff of Albany County to return the names of New Hampshire grantees so that they might be prosecuted.¹⁸ So persuasive was he that the Board of Trade accepted his views¹⁹ and the King was induced to fix the New York boundary at ". . . the Western Banks of the River Connecticut," by an order in council which Colden was happy to proclaim on April 10, 1765.²⁰ Another convincing factor was the popular petition to the King. The names for this were said to have been solicited by New York agents in the taverns of the disputed area. Yet the signers of these petitions were fairly representative.²¹

16 June 25, 1763, the committee reported. *Collections of Vt. Hist. Soc.*, II, 501-505. The committee provided for a saving of the rights of New Yorkers east of the twenty mile line. *Doc. Rel. to Col. N. Y.*, VII, 562-565.

17 *Vide supra*. He also argued that the Hudson was the natural commercial tributary of the region. *Ibid.*, VII, 565.

18 *Doc. Hist. of N. Y.*, IV, 558-560; *Colden Letter Books*, I, 293-295; Slade, *Vermont State Papers*, p. 16. This brought a counter-proclamation from Wentworth. *Doc. Hist. of N. Y.*, IV, 570; Slade, *Vermont State Papers*, p. 17.

19 *Colden Letter Books*, I, 285-292, 298-300, 304-306, 316-318. For Board's acceptance, July 13, 1764, *Report of the Regents on Boundaries of N. Y.*, I, 82-83; *Doc. Rel. to Col. N. Y.*, VII, 642.

20 Order in Council, July 20, 1764, *Report of the Regents on Boundaries of N. Y.*, I, 82-3; *Doc. Hist. of N. Y.*, IV, 574-5; *N. Y. Gazette* (Weyman), April 15, 1765.

21 Wardner, *Birthplace of Vermont*, p. 175; cf. Jones, *Vermont in the Making*, p. 217. There seems to be little basis for Middleton's statement that

The New Yorkers lost no time in following up this advantage. In 1765 surveyors began to run lines.²² By November 1, 1765, Colden had sold over 36,000 acres of the choicest land in Arlington, Manchester, Sunderland, Bennington, Pownal, and Shaftsbury, all in the southwestern part of the present State of Vermont.²³ These were laid out not in squares as Wentworth had done, but in any shape that would include the best lands.²⁴ The chief beneficiaries were prominent New York land speculators like James Duane, John Tabor Kempe, and Walter Rutherford.²⁵ Furthermore, to encourage the acceptance of New York jurisdiction, regrants to New Hampshire settlers were encouraged.²⁶

Alarmed at these inroads, the New Hampshire grantees took action to defend their property rights. Captain Samuel Robinson of Bennington and Jeremiah French of Manchester went

many of the names were said to be forgeries inspired by New York land speculators probably with official connivance. *Revolt U. S. A.*, pp. 125-6.

22 The New Yorkers entirely disregarded the argument that the Order in Council was prospective in effect as Lord Hillsborough and Lord Dartmouth believed. Benton, *op. cit.*, pp. 33-4, 35; Hall, H., *op. cit.*, p. 64. They did so because they believed the Order merely reaffirmed ancient jurisdiction rather than extended a new one. Jones, *Vermont in the Making*, p. 92. Jones states that up to July, 1764, New York kept its agreement to make no land grants except for military grants in the disputed area, with the exception of the Schneyder patent in 1763 which it had no reason to suppose conflicted with New Hampshire. *Ibid.*, pp. 46-9, 46 n. 48.

23 For example, on May 21, 1765, the Princetown patent covering 26,000 acres; on Oct. 30, 1765, the patent to James Napier, 10,000 acres. The figure is exclusive of 131,800 acres of military patents which eventually went to land speculators. Patent Books, XIV, 66; "Report of New York Commission on Land Claims in Vermont, 1797," p. 42 in Hall, H., "New York Land Grants in Vermont 1765-1776," *Collections of Vt. Hist. Soc.*, I, 153; Ford, *Colonial Precedents of Our National Land System*, pp. 33-4.

24 Cf. Hall, H., *Hist. of Vt.*, p. 78, n. 1; Alexander, *James Duane*, p. 70; Ford, *op. cit.*, pp. 33-4. Even Wentworth's "squares" were quite irregular, and sometimes, at least in the case of Newbury's charter, "stretched" to include friends. Jones, *op. cit.*, pp. 44-46.

25 Same as note 23. See above for the interest in fees if not in land that New York governors had in the region.

26 Wardner, *op. cit.*, pp. 56-80.

to New York where they made vain efforts to defend their titles. A proprietor's meeting at Stratford, Connecticut, and another at the home of Benjamin Ferris at Quaker Hill (Pawling, New York) resulted in the dispatch of an agent to England. Robinson was delegated to go, and William Samuel Johnson, the agent of Connecticut, was instructed to assist.²⁷ These land jobbers might easily have roused the settlers against New York, which had annulled many New Hampshire grants.²⁸ But, as yet, the negotiations of speculators and of colonial and British officials had not been displaced by the pitchforks, staves, and rifles of small farmers. Furthermore the Yankee landed interests had powerful allies in the Cabinet, especially the Archbishop of Canterbury who was interested in maintaining the New Hampshire grants to the Society for the Propagation of the Gospel.²⁹

This pressure brought favorable results.³⁰ Lord Shelburne dispatched a stern note to Governor Moore of New York ordering him to "make no new Grants of these Lands, and . . . do not molest any person in the quiet possession of His Grant

²⁷ Robinson sailed December 25, 1766. Benton, *op. cit.*, pp. 38-39. Alexander, *James Duane*, p. 86. In the application for relief against New York, the settlers on the east side of the Green Mountains did not join. Wardner, *op. cit.*, pp. 80, 84. Jones, *op. cit.*, p. 131. Significantly, of the 648 who signed petitions probably only 175 were *bona fide* landowning residents. *Ibid.*, pp. 126-7, 130.

²⁸ For this reason amongst others, Abraham Yates believed New York should have offered New Hampshire grantees New York title. Abraham Yates Papers, "Notes Concerning the Early Hist. of N. Y.," pp. 34-35. Even Colden admitted that *bona fide* settlers "ought in equity to have their small farms secured to them." *Colden Letter Books*, II, 15. See also his approval of the Springfield petition, November 13, 1764. Land Papers, XVIII, 96, 131; XIX, 155, 158.

²⁹ Lord Catham, Lord Chancellor Camden, Lord Shelburne, Secretary Conway were friendly to their interests. Benton, *op. cit.*, pp. 39-40. Meanwhile John Wentworth, commissioned in England in August 1766, succeeded his uncle, Benning Wentworth, as governor of New Hampshire in June 1767 and champion of the New Hampshire grantees. Wardner, *op. cit.*, pp. 98, 112.

³⁰ Robinson's petition was presented in March, 1767. *Doc. Hist. of N. Y.*, IV, 1027.

. . . under the Seal of the Province of New Hampshire.”³¹ Governor Moore tried to put the best possible face on his behavior in a lengthy answer to Shelburne. But this did not block an order of the King directing New York authorities not to “presume to make any Grant whatever, of any part of the Lands described in the said Report . . .” and threatening “His Majestys Highest Displeasure.”³² The Privy Council appeared willing to confirm the New Hampshire titles but a political reaction drove out Lord Shelburne. The need for keeping royalist friends in New York permitted a mere censure to suffice.³³

The New Yorkers then attempted to undo the harm their rivals had wrought. The King’s order did not block them from making grants in previously ungranted areas, for the New York Council construed the order to apply only to lands already granted by New Hampshire.³⁴ In accordance with this construction, Lieutenant-Governor Colden sold more than half a million acres of land in the disputed region to land jobbers amongst whom were William and Robert R. Livingston, Pierre G. DePeyster, Augustus Van Cortlandt, William Smith, William Cockburn, and John Morin Scott.³⁵ Hillsborough’s protest, on December 9, 1769, that the King’s order applied to “any grants to be made of the lands annexed to New York” by the King’s determination of boundaries, proved no more effective in deterring Colden than were the instructions to Lord

31 April 11, 1767, *Doc. Rel. to Col. N. Y.*, VII, 917.

32 Moore to Shelburne, June 9 and 10, 1767, *Doc. Hist. of N. Y.*, IV, 590-605; for a criticism of his answer, see Benton, *op. cit.*, pp. 41-46; Jones, *op. cit.*, pp. 150-53. Order of July 24, 1767, *Doc. Hist. of N. Y.*, IV, 609-611; *Colden Papers*, VII, 124-6.

33 Benton, *op. cit.*, pp. 47-8.

34 This seems to be the proper construction of the rather ambiguous phrase “any part of the Lands described in the said Report.” However, Governor Moore applied the Order to all previously ungranted lands west of the Connecticut River. *Doc. Rel. to Col. N. Y.*, VIII, 178. Cf. Jones, *Vermont in the Making*, pp. 149-150, 166-8, 224-5. But Hall, H., *Hist. of Vt.*, pp. 98-9 to *contra*.

35 Hall, H., “New York Land Grants in Vermont 1765-1776,” *loc. cit.*, I, 153 ff.

Dunmore or Dartmouth's objections to Governor Tryon.³⁶ Finally the King found it necessary to reaffirm his instructions to Tryon with an Order in Council that no further grants were to be made except soldier bounties.³⁷ Apparently neither the King's orders nor his minister's admonitions could curb the grants of New York Governors to their New York friends and sometimes, as has been shown, to themselves. Small wonder that settlers who squatted on and worked the claims derived from New Hampshire should feel that they had an equitable, if not a legal, right to the land.

Meanwhile, Governor John Wentworth, who had displaced his uncle, Benning, in June, 1767, saw an opportunity to get the New Hampshire Grant titles recognized by a vice-admiralty court. Captain William Dean and his two sons had felled trees preserved for the royal navy. Despite the oral permission that Dean said they had, they were liable to fine and imprisonment under statute and to forfeiture of their land under the terms of the New Hampshire charter of Windsor.³⁸ Wentworth urged

36 *Doc. Rel. to Col. N. Y.*, VIII, 193. Instructions to Dunmore, which remained substantially the same for Tryon down to the Revolution, *Acts of the Privy Council of England Colonial Series*, V, 219; Labaree, L. W., *Royal Instructions to British Colonial Governors*, II, 607, sec. 871. Cf. *Doc. Hist. of N. Y.*, IV, 609, 610, 611, 612. From September 11, 1769 to June 12, 1776, Colden, Dunmore, and Tryon sold almost 2,000,000 acres in military patents which eventually found its way into the same hands. Hall, H., "New York Land Grants in Vt.," *loc. cit.*, I, 146-159; Dartmouth to Tryon, March 3, 1773, *Doc. Rel. to Col. N. Y.*, VIII, 356-57. Jones has an excellent discussion placing the New York Governors' actions in a somewhat better light. *Vermont in the Making*, pp. 224-237.

37 April 7, 1773, *Doc. Rel. to Col. N. Y.*, VIII, 357. The prohibition lasted until Feb. 4, 1774. *Ibid.*, VIII, 409-410. See also Article 49, February 7, 1771, *ibid.*, VIII, 331; February 3, 1774, *Colden Papers*, VII, 206-210. Tryon was ordered to come to England. *Vide supra*.

38 For accounts of the Dean case, see Wardner, *The Birthplace of Vermont*, pp. 102-141, 146, 167-172; Alexander, *James Duane*, pp. 28-9; Hall, B. H., *op. cit.*, I, 146-158; *John Wentworth Qui Tam v. William Dean et al.*, Hough, C. M., ed., *Cases in the Vice Admiralty of the Province of New York and in the Court of Admiralty in the State of New York, 1715-1788*, pp. 227-233; *Doc. Hist. of N. Y.*, IV, 621-633, 645-60; Mayo, *John Wentworth*, pp. 56-60; Jones, *op. cit.*, pp. 191-95.

their prosecution. "It is the elder of the Deans that had aliened his estate and absconded," he wrote Attorney-General Kempe on July 21, 1769, "but you'll please not withstand to pursue the prosecution to try at least the validity of his conveyances."³⁹ The New York speculators, who included Kempe himself as well as Duane and Rutherford, realized that if Dean's lands were forfeited it would in effect sustain the New Hampshire grants and invalidate their own New York titles. So much did they bestir themselves that Duane, one of the most eminent attorneys in New York, appeared as counsel for the Deans. Their activities in behalf of the Deans induced Wentworth to complain to Judge Morris, on October 5, 1769, "that thro' the arts of Mr. Dean this prosecution has been represented as ruinous to every landowner in the Province of N. York. . ." ⁴⁰

On November 15, apparently with the knowledge of Duane, Captain Dean sold all his goods and chattels to Judge Samuel Wells. When, in December, decrees were entered against the Deans, they announced that they could not pay. A writ against their property was returned unsatisfied because of the sale to Wells. Governor Wentworth petitioned the Governor and Council of New York to permit Dean's former estate to escheat to the Crown since it was held "under a grant in this Province which expressly contains a reversion & reentry to the Crown upon cutting white pine timber. . ." ⁴¹ Meanwhile the Deans were released on a clemency plea in February and March, 1770. But New York, on August 14, 1770, refused to hold invalid the conveyance to Wells. Its answer argued that, since the question of title was to be tried in New York courts, it was improper to pass on a grant which New Hampshire was considered without authority to make. ⁴²

³⁹ Wardner, *op. cit.*, p. 118.

⁴⁰ *Ibid.*, pp. 127-28. Duane said the Deans applied to him for aid. *Doc. Hist. N. Y.*, IV, 659-660. Cf. Mayo, *John Wentworth*, p. 57.

⁴¹ Wardner, *op. cit.*, pp. 140-1; *Doc. Hist. of N. Y.*, IV, 626-633.

⁴² *Ibid.*, IV, 645-7; Wardner, *op. cit.*, pp. 168-9; Mayo, *John Wentworth*, pp. 58-60.

While these negotiations were being conducted the settlers and speculators were pressing their rival claims. By 1769 the conduct of affairs was rapidly moving from council tables and mail pouches to law courts and open fields. New Hampshire grantees had evicted some Springfield squatters; New Hampshire officials, old Dutch Pownal settlers. The latter evictors were imprisoned by New York.⁴³ New York began in earnest to oust New Hampshire grantees through ejectment proceedings.⁴⁴ In October, commissioners were sent from Albany to survey the farm of James Breakenridge as a preliminary to an ejectment from the Walloomsac grant.⁴⁵ These were induced to withdraw by the armed friends who had gathered to aid Breakenridge.⁴⁶ The resistance was followed by a New York proclamation ordering the arrest of Breakenridge, Jedediah Dewey, Samuel Robinson, and other named "rioters." Lieutenant-Governor Colden complained to Governor John Wentworth that the inhabitants of the Green Mountains "have thrown off their obedience to the authority of this Province, alledging that their Settlements are within the Limits of New Hampshire."⁴⁷ The battle lines between the New York specu-

⁴³ New Hampshire officials were arrested in 1764. *Doc. Hist. of N. Y.*, IV, 575-77; Wardner, *op. cit.*, p. 146.

⁴⁴ *Peter Quiet ex dem Michael Schlatter v. Josiah Fuller* (1770), parchment judgment rolls in the Hall of Records, New York City.

⁴⁵ Patent in 1739 in which James DeLancey, Gerardus Stuyvesant and others were interested. Hall, H., *Hist. of Vt.*, p. 116; *Doc. Hist. of N. Y.*, IV, 615-616; *Colden Letter Books*, II, 196; parchment judgment roll filed November 16, 1770, *Peter Quiet ex dem George Clarke v. James Brakenridge*, in the Hall of Records, New York City.

⁴⁶ Benton claims the commissioners were induced to withdraw without violence or threats. Yet it is hard to see how this was possible since he himself later describes the event as "the first deliberate resistance to the royal authority in the colonies." (*sic!*) *Vt. Settlers and N. Y. Land Speculators*, pp. 51-2. Affidavit of Breakenridge and Robinson, *Doc. Hist. of N. Y.*, IV, 618; Colden to Wentworth, *Colden Letter Books*, II, 196.

⁴⁷ Proclamation Dec. 12, 1769, *Doc. Hist. of N. Y.*, IV, 615-616; *Cal. of Coun. Min.*, p. 480. None were arrested under it or brought to trial. Hall, H., *op. cit.*, p. 116; Colden to Wentworth, Dec. 20, 1769, *Colden Letter Books*, II, 196.

lators and the small farmers with their Yankee realtor allies were rapidly taking shape.

Suits in ejectment were begun against James Breakenridge, Isaiah Carpenter, and others.⁴⁸ These were understood to be test cases. Ethan Allen, who had become actively interested in land in the region, went to Connecticut to hire Jared Ingersoll for the defendants, and rode to Portsmouth, New Hampshire, to procure necessary documents for the defense. Ethan Allen's exertions were no doubt stimulated by the fact that he, his three brothers, and his cousin, Remember Baker, were accumulating land for speculative purposes with knowledge of adverse claims, even shortly before the trial in 1770. Ethan Allen owned one fifth of the land possessed by them through the Onion River Company, which they subsequently formed in March 1773, a share eventually coming to about 11,750 acres, valued at \$70,300 by July 1775. His native shrewdness made him keenly aware of the importance of the legal determination of any land title in the disputed region where he was faced with the alternative of making the New Hampshire titles good or of losing all.⁴⁹

48 There appear to have been nine of these ejectment suits each of which covered different aspects of the legal problems involved. *Doc. Hist. of N. Y.*, IV, 682; Jones, *op. cit.*, pp. 202-4; John Munroe to J. T. Kempe, November 10, 1769, August 20, 1770, May 10 and November 10, 1771, John Tabor Kempe Papers (N. Y. Hist. Soc.). See also the material on the "New Hampshire Grants 1763-1773," *ibid.*; *James Jackson ex dem John T. Kempe et al. v. Samuel Rose* (1770); *Peter Quiet ex dem George Clarke et al. v. James Brakenridge* (1770); *Peter Quiet ex dem John Small v. Isaiah Carpenter* (1770), *ibid.*, Lawsuits, J-L, P-Q. Peter Sylvester of Albany joined the defence. Jones, *op. cit.*, p. 201.

49 These land speculators got title to most of the land of Benjamin Ferris, Edward Burling, and Samuel Willis *et al.* in Charlotte, Ferrisburg, Colchester, Williston, and Burlington between 1769 and 1777. The Onion (now Winooski) River Company, formed by them, owned the greater part of eleven townships. It acquired 77,622 acres, sold 16,793, leaving 60,829 acres which in 1776 were valued at \$297,408.50. The land jobbery of the Allens accounts in some measure for their failure to receive election to important office. Benton, *op. cit.*, pp. 56-60; Alexander, *James Duane*, p. 76, n. 32; Pell, *op. cit.*, pp. 30, 57, 75, 285-288; Wilbur, *Ira Allen*, I, 8, 9, 15, 19, 20, 37-42, 44, 52, 53, 62; II, 522-525.

The trial of *Peter Quiet ex dem John Small v. Isaiah Carpenter*, which was held before Judges Robert R. Livingston and George Duncan Ludwig on June 28, 1770, put the issue of title to lands in Shaftsbury to legal test with two New York land speculators, Attorney-General John T. Kempe and James Duane, as counsel to the plaintiff.⁵⁰ The plaintiff's case was upheld when the court rejected the New Hampshire grant by judicially noting that the land was in New York. After the verdict, Duane and Kempe unsuccessfully tried to bribe Ethan Allen to persuade his people to submit. Allen foreshadowed opposition in his remark, "The gods of the valleys are not the gods of the hills." When Kempe asked its meaning he was defiantly told, "If you will accompany me to Bennington Hill, it will be made plain to you."⁵¹

In the two years that followed, New York tried to make good the verdict of its courts. Its persistence fanned the embers of controversy into the flames of rebellion. It sent its sheriffs several times with writs of possession to be served upon Breakenridge.⁵² But these were violently repelled by bands of armed

⁵⁰ Hall, H., *Hist. of Vt.*, pp. 118-120; Pell, *Ethan Allen*, pp. 30-2; Duane, *Narrative of . . . 1773*; Allen, Ira, *The Natural and Political History of the State of Vermont*, p. 23; *Doc. Hist. of N. Y.*, IV, 681-689; Bill of Exceptions, *Small v. Carpenter*, printed in H. Hall, *Hist. of Vt.*, pp. 481-2, app. no. 6; Crockett, *Vt. Green Mt. State*, I, 328-333. A parchment judgment roll against Isaiah Carpenter may be found in the Hall of Records, New York City. In view of the ruling against Carpenter no defence was made in the other cases and the plaintiffs won. Jones, *op. cit.*, p. 204.

⁵¹ Hall, H., *op. cit.*, p. 119; Pell, *Ethan Allen*, p. 32; Allen, Ira, *History of Vermont*, p. 24; Alexander, *op. cit.*, p. 76; Isham, E. S., "Ethan Allen . . .," Vermont Historical Society, *Proceedings*, 1898, p. 35; Middleton erroneously says the exchange occurred during the trial. *Revolt U. S. A.*, pp. 131-2. Referring to Allen's remark, M. B. Jones says, "The immediate appeal to force by the settlers under the New Hampshire grants after the ejectment suits went against them at Albany, together with the entire absence of effort to litigate the matter any further, makes it difficult to resist the conclusion that they were advised that their case was unsound at law and that a favorable conclusion could not be expected there." *Vermont in the Making*, p. 208.

⁵² Yates Papers, "Notes Concerning the Early Hist. of N. Y.," p. 36.

farmers.⁵³ New York issued proclamations for the arrest of the rioters but still the violent defiance continued.⁵⁴ Nor was the opposition confined to west of the Green Mountains where it was strongest. It could be found in the eastern region where by the autumn of 1770, armed settlers under Joseph and Benjamin Wait and Colonel Nathan and Samuel Stone denied New York jurisdiction and forced its courts to adjourn.⁵⁵ Even when New York forcibly inducted a henchman, his home was frequently burned down and he himself driven off.⁵⁶ Surveyors sent to run lines fled back to New York with tales of beatings, threats, and confiscation of their implements.⁵⁷ To

53 Affidavits on resistance, Oct. 1771, *Doc. Hist. of N. Y.*, IV, 731 ff.; affidavits of Robert Yates, Nov. 5, 1771, *Cal. of Coun. Min.*, p. 487; Yates to Duane, July 20, 1771, Duane Mss, II.

54 Complaints by Magistrates of Cumberland Co., July 25, 1770; proclamation to arrest Simeon Hatheway, Silas Robinson, *et al.*, Oct. 31, 1770; order for trial of Silas Robinson, *Cal. of Coun. Min.*, p. 483; *Doc. Hist. of N. Y.*, IV, 661, 671-2 ff.; *cf. ibid.*, pp. 685-691; *Doc. Rel. to Col. N. Y.*, VIII, 252.

55 This insurrection subsided by the close of the year. Wardner, *op. cit.*, pp. 173-182, 186-8. On November 1, 1770, 400 inhabitants of the region denounced the rioters. *Doc. Hist. of N. Y.*, IV, 663-5; *cf.* 672-5; Hall, B. H., *op. cit.*, I, 162-9. R. C. Benton believes that the inaccessibility of the eastern side of the Mountain to New York made that colony more willing to treat the settlers leniently, hence there were more "Yorkers" in Chester, Brattleboro, and Hertford for a while. *The Vermont Settlers and the New York Speculators*, pp. 118-125; Wardner, *op. cit.*, pp. 191-231. Wardner stresses the affray that arose from the efforts to arrest these leaders in May, 1770, as preceding the resistance in July 1771 at Breakenridge's farm. *Ibid.*, pp. 145-158. M. B. Jones believes that this controversy was not connected with any plan of opposition to New York land titles. *Vermont in the Making*, pp. 261-264. Yet, even though this disturbance concerned at the time a criminal action, it was directed against a New York court's jurisdiction and was thus related to struggle over land.

56 Homes of Charles Hutcheson and John Reid were burned. *Cal. of Coun. Min.*, p. 488, Nov. 27, 1771. Robert Cockran led a band which violently ejected John and Robert Todd. *Ibid.*, Dec. 11, 1771. The New York Sheriff placed his own tenant in place of Carpenter but Carpenter's neighbors forced him to flee. Hall, H., *op. cit.*, p. 133.

57 Duane complained that his surveyors could not run lines in his Socialborough patent, acquired April 3, 1771. Benton, *op. cit.*, pp. 91, 100. The Stevens party was dismissed under pain of death. *Cf. Doc. Hist. of N. Y.*,

induce recognition of its title, New York tried to persuade New Hampshire grantees to accept New York titles confirming their earlier Wentworth grants. Its land speculators offered to reduce official fees and to finance conforming tenants. However, these blandishments did not split the ranks of the opposition.⁵⁸

In July, 1771, Sheriff Ten Eyck got together an extraordinarily large posse and proceeded toward the Breakenridge farm.⁵⁹ But this was forced to withdraw after walking into an ambushade which had been arranged by the experienced military captains, Seth Warner and Robert Cockran, who led the Green Mountain Boys. The bold resistance of the Bennington farmers and the sympathy of the Sheriff's posse for their situation encouraged the New Hampshire claimants in their cause.⁶⁰ More than one New York settler found his cabin offered by the grandiloquent Ethan Allen as "a burnt Sacrifice to the Gods of the world." Such was the fate of Charles Hutcheson who was driven off his land near New Perth at the end of October with Allen's command, "Go your way now & complain to that Damned Scoundrel your Governor, God Damn

IV, 799, 803; Wilbur, *Ira Allen*, I, 18; Allen, I., *Hist. of Vt.*, p. 40; Hall, H., *Hist. of Vt.*, pp. 129-131; Cockburn to Duane, Sept. 10, 1771, Duane Mss, II.

58 Col. Thomas Howard offered the settlers 5,000 acres in Hinsdale for only £300 in patent fees. Alexander, *op. cit.*, pp. 77-78; Duane, *State of the Evidence and Argument in Support of...N. Y.*, *loc. cit.*, p. 13; Duane, *A Narrative of the Proceedings*; Allen, I., *History of Vermont*, p. 20; *Doc. Hist. of N. Y.*, IV, 678, 785, 791, 798; Duane Mss, Day Book F, Jan. 1, 1772 (N. Y. Hist. Soc.); Duane Mss, II, Dec. 10, 1771; Feb. 14, April 8, 1772. See also Jones, *op. cit.*, pp. 110-120. Colden to Hillsborough, Jan. 4, 1770, noted his willingness to accept half fees but Moore's unwillingness to do so, *Colden Letter Books*, II, 198-9. Benton believed the fees were oppressive. *Vt. Settlers and N. Y. Land Speculators*, pp. 80, 100.

59 Ira Allen says 750 men, *History of Vermont*, p. 29. H. Hall says 300, *Hist. of Vt.*, p. 124. Robert Yates wrote of 200 men in a letter to Kempe and Duane, July 20, 1771. James Duane Papers (N. Y. Hist. Soc.). Cf. *Doc. Hist. of N. Y.*, IV, 732-743.

60 Jones, *op. cit.*, pp. 284-88; Benton, *op. cit.*, pp. 86-87. *Vide infra*, nn. 65, 96. Benton says this was the last attempt of New York to subdue the New Hampshire grantees with an open attack. *Ibid.*

your Governour, Laws, King, Council & Assembly.”⁶¹ New York was left to the sorry comfort of issuing orders and of offering twenty pound rewards for the capture of Ethan Allen, Robert Cockran, and other rioters.⁶² Somewhat sardonically a Green Mountain counter-proclamation offered a reward of fifteen pounds for James Duane and ten pounds for John T. Kempe.⁶³

It required a rare sense of humor for Ethan Allen to write to his friend, Major Philip Skene, the justice of peace, who had begged Ethan to “repair to Connecticut” until things had quieted down, “that by Virtue of a Late Law in Province they are Not Allowed to hang any man before they have ketched him.”⁶⁴ With reckless bravado Allen accepted a bet to leave his counter-proclamation at Benedict’s Tavern in Albany. This he did after leisurely hitching his horse, and drinking his punch. The friendliness of the crowd that watched him gallop off suggests that there were many sympathizers in Albany with little love for New York speculators.⁶⁵

In this violent opposition to New York, the Green Mountain Boys were in some measure aided by Governor John Wentworth. In 1771, he had a survey made of the Grants, a request for which he intended to include in a petition to the crown.⁶⁶ Although upon the request of Tryon he disclaimed this intention, he refused to issue against the rebels a proclamation of

61 *Doc. Hist. N. Y.*, IV, 745-46; cf. Pell, *Ethan Allen*, pp. 40-41; Jones, *op. cit.*, pp. 289-290.

62 Order in Council, Nov. 27, 1771, *Doc. Hist. of N. Y.*, IV, 749.

63 A Connecticut paper dated Feb. 5, 1772, cited by Pell, *Ethan Allen*, p. 42; cf. Alexander, *op. cit.*, pp. 79-80; Hall, H., *op. cit.*, p. 134.

64 Pell, J., *Ethan Allen*, pp. 45-46.

65 *Ibid.*, p. 47. Abraham Yates seemed a bit peeved with the New York speculators. Yates Papers, *loc. cit.*, p. 36. *Vide infra*, n. 96.

66 *Doc. Hist. of N. Y.*, IV, 721-2, 691-6. By the latter part of 1771, Governor John Wentworth secretly, though temporarily, cooled toward the efforts of the New Hampshire settlers to seek confirmation from the Crown when he had some prospect of getting land from Governor Tryon for himself. Jones, *Vermont in the Making*, pp. 218-223, 179.

which he believed his council would disapprove.⁶⁷ The real reason for this refusal became apparent when, in May, 1772, a memorial, prepared by William Parker, asking for the reannexation of the Grants, was approved by the Council of New Hampshire.⁶⁸ While governors and councilors prated about the shadow of right, armed bands struggled for possession of the substance.

By 1772 these disturbances had deepened into a veritable border war in which the New Hampshire grantees had vastly superior striking power. They were organized into fast-moving bands by shrewd and daring leaders like Ethan Allen, Seth Warner, Remember Baker, and Robert Cockran.⁶⁹ They made their swift forays over familiar terrain in friendly territory. Their greater numbers were made more effective by a high fighting morale born of the realization that they were struggling for their homes and lands rather than merely obeying a summons to a posse. Their leaders, profiting from the experience of the anti-renters of 1766, shrewdly adopted methods which reduced to a minimum the chance of military interference. Thus, they terrified their enemies with threats and beatings rather than with bloodshed and death. Indeed, the Green Mountain Boys anticipated those extra-legal bodies which functioned as Committees of Safety and Military Associations against England on the eve of the Revolution. Their evolution was akin to that of Pennsylvanian revolutionary agencies like the "Paxton Boys," Military "Associators" and Committees

⁶⁷ *Doc. Hist. of N. Y.*, 731-2, 748-9, 755-6.

⁶⁸ *N. H. Provincial Doc.*, VII, 298; *N. H. Miscellaneous Provincial and State Papers*, XVIII, 612.

⁶⁹ Hall, H., *op. cit.*, pp. 128-131; Pell, *Ethan Allen*, pp. 32-36; Slade, *Vermont State Papers*, p. 21. Ethan Allen had probably learned much from the Anti-Rent war of 1766 which took place in territory that practically adjoined his home in Salisbury, Connecticut. He could not have failed to note the inefficiency of New York provincial authorities, the martial methods of the rebels which brought prompt military intervention, and the pardon of Prendergast. Jones, *op. cit.*, pp. 281-82; *cf.* pp. 339-41.

of Safety, which canalized opposition⁷⁰ first against the Quaker oligarchy and then against England.⁷⁰

In January, 1772, a party of seventy or eighty Yankee frontiersmen stormed the home of Jonas Moore in Putney and carried off some chattels which had been taken into custody by a writ against one of their number in an action for debt.⁷¹ In March, Justice Munro, in reprisal, swiftly descended upon Remember Baker's home and began to carry him, his wife, and son off to New York. But the prisoners were rescued by a small band which intercepted the New York party.⁷² The reports of the growth of armed resistance and a sharp letter from Hillsborough alarmed Governor Tryon and in May 1772 he decided to make peaceful overtures. Through the friendly agency of Major Philip Skene, commissioned as a judge in Charlotte County, delegates were invited to present the New Hampshire grantees' views.⁷³ But a strong opposition to sending any delegation developed because of Governor Tryon's treatment of the Carolina Regulators with whom these yeomen had much in common. One of their captains charged that a few

⁷⁰ For the creation of revolutionary agencies, see Hall, H., *op. cit.*, pp. 233-5; cf. pp. 178-181, 197-207; "Conventions... 1765-1777" in *Collections of the Vt. Hist. Soc.*, I (1870), 5-9; Allen, I., *Hist. of Vt.*, pp. 26-7, 32; cf. Lincoln, C. H., *Revolutionary Movement in Pennsylvania 1760-1776*, pp. 196, 209-212, 215-223, 246, 267; Selsam, T. P., *The Pennsylvania Constitution of 1776 a Study in Revolutionary Democracy*, pp. 25, 74-93; and Upton, R. F., *Revolutionary New Hampshire*, chaps. II-III.

⁷¹ *Doc. Hist. of N. Y.*, IV, 757-761, 766, 770, 771; *Cal. of Coun. Min.*, p. 489, February 28, 1772.

⁷² *Doc. Hist. of N. Y.*, IV, 777; Hall, H., *op. cit.*, pp. 135-7; Middleton, *Revolt U. S. A.*, pp. 137-8, citing Ethan Allen's account in the *Connecticut Courant*, April 21, and June 2, 1772; Peter W. Yates to Duane, April 7, 1772, Duane Mss, II.

⁷³ Abraham Yates wrote, "By the year 1772 the New York speculators were at their wits end..." Yates Papers, *loc. cit.*, p. 36; cf. *Doc. Hist. of N. Y.*, IV, 778-782; *Cal. of Coun. Min.*, p. 490, May 2, 1772 and p. 491, June 25, 1772; *Doc. Rel. to Col. N. Y.*, VIII, 294, 298-9; Ms Diary of William Smith (N. Y. P. L.), entries for June 15 and Oct. 21, 1772. Artillery was brought down from East Hoosick to Bennington. *Cal. of Coun. Min.*, May 19, 1772, p. 440.

minutes prior to the battle of Alamance, the year before, Tryon had ordered the execution of a Regulator emissary who had entered the Government lines under a flag of truce.⁷⁴

Despite these misgivings a basis for negotiations was established when Captain Stephen Fay and his son were dispatched as delegates.⁷⁵ Upon arriving they delivered themselves of a disquisition on the social compact written by Ethan Allen. "No tyrannical exertions of the powers of government," ran their message, "can deter us from asserting and vindicating our undoubted rights and privileges as Englishmen. . . . Laws and society compacts were made to protect and secure the subjects, in their peaceable possessions and properties, and not to subvert them."⁷⁶ Without passing on Allen's appeal to the natural and eternal "Law of self preservation," the Governor adopted, in July 1772, a New York Committee's recommendation for the suspension of all actions concerning the land in question until the King acted.⁷⁷ Furthermore he pardoned the proscribed Green Mountain leaders.⁷⁸

The huzzas at Bennington that greeted this truce were unfortunately premature.⁷⁹ For, construing the understanding

⁷⁴ Allen, I., *op. cit.*, pp. 33-4; Middleton, *op. cit.*, p. 141; Bassett, J. S., "Regulators of North Carolina 1765-1771," American Historical Association, *Annual Report*, 1894, pp. 144-212; Henderson, A., "Origin of Regulation in North Carolina," *American Historical Review*, XXI (1916), 320-332.

⁷⁵ Captain Stephen Fay and his son, D. Jonas Fay, carried their message, part of which read, "If we do not oppose the Sheriff and his Possey, he takes immediate possession of our houses and farms . . . though they stile us rioters, for opposing them, and seek to catch and punish us as such, yet, in reality, themselves are the rioters, the tumultuous, disorderly, stimulating faction, or, in fine, the land-jobbers . . ." Slade, *Vermont State Papers*, pp. 26, 28. *Vide* Jones, *Vermont in the Making*, pp. 295-301.

⁷⁶ Slade, *Vermont State Papers*, p. 25; Pell, *Ethan Allen*, p. 50; *cf.* Allen, E. and Fay, J., *A Concise Refutation*, p. 11; Allen, I., *Some Miscellaneous Remarks, and Short Arguments, on a Small Pamphlet*, pp. 4-5, 13; *Connecticut Courant*, March 17, 1777.

⁷⁷ *Doc. Hist. of N. Y.*, IV, 786-792; Hall, H., *op. cit.*, p. 140. *Cf.* Duane Mss, II, June 19 and August, 1772.

⁷⁸ Pell, *Ethan Allen*, p. 51.

⁷⁹ July 15, 1772, *Doc. Hist. of N. Y.*, IV, 792-3; *Connecticut Courant*, August 22, 1772 cited in Hall, H., *op. cit.*, pp. 140-1.

prospectively, so as to apply solely to actions not prosecuted, or incompletely prosecuted, New Yorkers continued to claim what had been previously awarded by their court. But in this they reckoned without the "Onion River Company" group in which the Allen family was heavily interested. The Allens were not the ones to abide by a construction of an agreement prejudicial to their speculative interests. The conflict of interests boded ill for future harmony. Thus Surveyor Cockburn's activities and the Green Mountain Boys' destruction of his instruments and of Colonel Reid's flour mill at Otter Creek, some distance east of Crown Point, provoked mutual charges of bad faith. When the delegates defended the conduct of their people, compromise became impossible.⁸⁰

With the collapse of the truce in the fall of 1772, both sides petitioned for the favor of the King. Meanwhile, the Council advised Governor Tryon to apply for military aid which he did in October.⁸¹ But the home authorities were reluctant to repeat the experiences of the disturbances of 1766. Tryon was informed that troops "ought never to be called into the aid of the Civil authority, but in cases of absolute and unavoidable necessity. . ." ⁸² In the face of the increasing terrorism of the Green Mountain Boys in 1773, Tryon repeated his request to General Haldimand. But again New York was left to its own inadequate resources. Dartmouth informed the governor of the King's disapproval of the interposition of troops,

80 Gov. Tryon to Inhabitants of Bennington, August 11, 1772, *Doc. Hist. of N. Y.*, IV, 793-4; Pell, *op. cit.*, pp. 49-53; Hall, H., *op. cit.*, pp. 141-5; Jones, *Vermont in the Making*, pp. 303-13. The treatment of Deputy Surveyor Benjamin Stevens and his party provoked a warrant to arrest Baker and Ira Allen, October 21, 1772. *Doc. Hist. of N. Y.*, IV, 799-800. Vain efforts were made by settlers above Hinsdale to induce Massachusetts to take jurisdiction. Jones, *op. cit.*, 185-190.

81 *Cal. of Coun. Min.*, p. 493; *Doc. Hist. of N. Y.*, IV, 794-9.

82 Dartmouth to Tryon, December 9, 1772. The letter added that the interposition of troops "would be highly improper if applied to support possessions which after the order issued in 1767 upon the petition of the proprietors of the N. Hampshire Townships, may be of very doubtful title." *Doc. Hist. of N. Y.*, IV, 815.

an attitude which remained the same throughout the controversy.⁸³

In 1773 the New York claimants renewed their efforts to acquire their land. In July, Colonel Reid reclaimed and retook the lands and the mills at the lower falls of Otter Creek where he brought a band of Scots to settle as his tenants. But in August, Allen, Warner, and Baker returned with an armed band of one hundred. These forcibly intimidated Reid's tenants and warned them off. They then dismantled Reid's mill situated on the Crown Point side of Otter Creek, and, when he returned, destroyed it. When asked by what authority they did these things, Baker replied "that they lived out of the Bounds of the Law, and holding up his Gun said that was his Law" and Allen, that "he and his Companions were a Lawless mob, there Law being Mob Law."⁸⁴ The Green Mountain Boys, ensconcing themselves in a newly constructed blockhouse on the Onion River, hurled their defiance at New York authority and violently obstructed the serving of writs of ejectments with threats of the "beech seal," a euphemism for a vigorous beating with beech twigs.⁸⁵ Governor Tryon continued vainly to summon military aid.

Failing to make good its claims, New York tried to win settlers to its cause. It won many adherents in the patent of

⁸³ General Haldimand at first refused then excused himself on the grounds of the lateness of the season. *Cal. of Coun. Min.*, p. 498, September 3 and 29, 1773; Tryon to Haldimand, Sept. 1, 1773, *Doc. Rel. to Col. N. Y.*, VIII, 394. Cf. *ibid.*, VIII, 395; *Doc. Hist. of N. Y.*, IV, 799-800, 843-5, 855; Dartmouth to Gov. Tryon, Oct. 14, 1773, *ibid.*, IV, 856; *Doc. Rel. to Col. N. Y.*, VIII, 399. Colden solicited Gage for aid in vain, Sept. 1 and 29, 1773. *Cal. of Coun. Min.*, p. 502; Colden to Dartmouth, October 4, 1774, *Colden Letter Books*, II, 364-5. Abraham Yates observed, "Regular troops had been employed in the Riot of Pendergrast but the Governour—it was said—had received such a rebuff upon that account that it would have been vain to attempt it a second time." Yates Papers, *loc. cit.*, p. 36.

⁸⁴ *Doc. Hist. of N. Y.*, IV, 848, 842-843, 852; other affidavits, *ibid.*, pp. 846-854; Aug. 31, 1773, *Cal. of Council Minutes*, p. 497; Wilbur, *op. cit.*, I, 43-49; Pell, *Ethan Allen*, pp. 61-2; Jones, *op. cit.*, pp. 321-23.

⁸⁵ Benton, *op. cit.*, pp. 110-111; Hall, H., *op. cit.*, p. 166.

Durham.⁸⁶ There Duane willingly⁸⁷ confirmed worthless titles that many of the settlers traced through on old Lydius grant.⁸⁷ Jacob Marsh of Socialborough⁸⁸ and Benjamin Spencer of Durham were made justices of peace under the authority of New York. Their leadership of the Yorkers provoked the wrath of the Green Mountain Boys who swooped down upon Durham in the fall of 1773. Ethan Allen vowed that if his men ever had to come again, "They would Lay all Durham in Ashes and leave every person in it a Corpse." Spencer was captured on November 20, after Allen had shattered his front door and pulled him out of bed about the middle of the night. He was tried at his own doorstep and sentenced to having his house burnt, but this sentence was commuted to a "roof lift" upon his promise not to act under New York authority. Before departing, Allen and Baker truculently informed Spencer that "they valued not the Government nor even the Kingdom; That force was force in whatever Hands & that they had force and power sufficient to protect themselves against either."⁸⁹ Furthermore Jacob Marsh was taken, tried, and given a sentence together with instructions to encourage New Hampshire title.⁹⁰ The Durhamites were weaned from New York by promises of protection and of reasonable rates.⁹¹

86 This includes the present site of Clarendon and part of Shrewsbury. See map in Alexander, *James Duane*, p. 70.

87 Lydius acquired the tract in 1744 and got Rhode Island people to settle it. Duane reserved 14,225 acres for himself and his associates. The patent of 32,000 acres had been granted on Jan. 7, 1772. Patent Books, XVI, 112; *Doc. Hist. of N. Y.*, IV, 956; also Hall, H., *op. cit.*, pp. 167-168; Benton, *op. cit.*, p. 101.

88 Patent of Socialborough, April 3, 1771, of 45,000 acres, of which 15,000 went to Duane, includes the present site of Rutland. Hall, H., *op. cit.*, pp. 167-168.

89 *Doc. Hist. of N. Y.*, IV, 866, 861. As early as June 3, 1772, Spencer complained of threats from the Bennington rioters. *Cal. of Coun. Min.*, pp. 490-1; *Doc. Hist. of N. Y.*, IV, 857, 859-861, 862-9; affidavit of Charles Button, Nov. 24, 1773, Duane Mss, III; Hall, H., *op. cit.*, pp. 167 *et seq.*; Pell, *op. cit.*, pp. 63-5.

90 He was given a certificate of protection, Nov. 25, 1773, which read "... our mob Shall not medeal further with him as long as he behaves." *Doc. Hist. of N. Y.*, IV, 864.

91 *Ibid.*, IV, 856-9; Hall, H., *op. cit.*, pp. 175-77.

New York authorities tried to keep the Board of Trade favorable to their cause. By the beginning of 1773 the Board, referring to the still unsettled New York-Massachusetts controversy as well, had reached a tentative conclusion on the priority of claims: first, Massachusetts grants made before 1740 under actual improvement; second, New York grants made before 1749 similarly developed; then, where grants overlapped since 1749, the grants to the prior possessors and improvers were to take precedence.⁹² But Tryon did not approve of this plan. He argued that it was unfair to New York proprietors who were kept by force from settling their land.⁹³ He favored the confirmation of all New York patents and compensation to settlers under the New Hampshire grants with waste land and with a suspension of quit-rents. John Blackburn, who represented the New York proprietors in England, was provided by Duane with legal arguments with which he influenced London opinion somewhat successfully.⁹⁴

In 1774, New York revived its vain practice of passing resolutions and proclamations for the arrest of leaders whom no force had as yet been sufficiently strong or bold to capture.⁹⁵ In March, 1774, the New York legislature promised rewards up to £100 and enacted that unless these leaders surrendered within seventy days they were "to be adjudged, deemed and (if indicted for a capital offence hereafter to be perpetrated) to

⁹² Dec. 3, 1772, *Doc. Rel. to Col. N. Y.*, VIII, 330-337; *Doc. Hist. of N. Y.*, IV, 803-814, also cf. pp. 712-720, 827-830. There were other provisions but these are the most important.

⁹³ Tryon to Lord Dartmouth, July 1, 1773, *Doc. Hist. of N. Y.*, IV, 831-842.

⁹⁴ Duane, *A State of the Right of . . . N. Y.*; Duane to Blackburn, July 7, 1773, Duane Mss, III (draft); Blackburn to Duane, Aug. 7, 1773, Duane Mss, III; Duane to Robert Livingston, September 25, 1773, Redmond-Livingston Mss.

⁹⁵ For threats against any captor, Smith, J. H., *Am. Struggle for the Fourteenth Colony Canada and the American Revolution*, I, 115. Feb. 8, 1774, resolution for arrest of Ethan Allen, Seth Warner, Remember Baker, Robert Cockran, Peleg Sunderland, Sylvanus Brown, James Breakenridge, John Smith—proclamation issued, *Cal. of Coun. Min.*, pp. 499-500; cf. *Doc. Hist. of N. Y.*, IV, 869-871; Slade, *Vermont State Papers*, pp. 37-42.

be convicted and attainted of felony.”⁹⁶ This provision for condemnation *in absentia* was boldly defied. Indeed, a republican note entered into the counter-attack of words. “In fine, every Opposition to their monarchical Government,” ran an opposing broadside, “is deemed Felony, and at the End of every such Sentence, there is the Word DEATH!” Threats of death were pronounced against anyone who dared arrest the Green Mountain leaders and adverse publicity was spread against New York.⁹⁷ The expense of printing and distributing this and other pamphlets in defense of their interests, the redoubtable Allens charged to their Onion River Company.⁹⁸ In view of the connection between their republican principles and their speculative interests, it is perhaps fitting that they should have done so. Indeed, when the Company was formed it was understood that Ethan was to remain at Bennington “to manage political affairs.”

Persistent terrorism throughout 1774 contracted the extent of the civil jurisdiction of New York. Reports told of insults to and beatings of New York sympathizers who were further overawed by the construction of two blockhouses, one on Onion River, the other on Otter Creek.⁹⁹ For the third time military aid was sought in September. But General Gage de-

96 March 9, 1774, *Doc. Hist. of N. Y.*, IV, 871-3; *Col. Laws of N. Y.*, V, 647-655. For Duane's part, see Feb. 1774, Duane Mss, X. M. B. Jones concludes, “There is no doubt that a considerable element among the people of New York, even in the City of New York, also sympathized with the people on the Grants, and would not be parties to an enforcement of the proclamation and the statute by which New York sought in 1774 to quell the violent opposition to her jurisdiction in that quarter.” *Vermont in the Making*, p. 331; cf. pp. 338-39.

97 *The Proceedings of the Convention of the . . . New Hampshire Settlers . . .*, p. 14. A convention at Bennington in April 1774 decreed the trial of Duane, Kempe, or Banyar if they set foot on the Grants. *Ibid.*, p. 6. Cf. Allen, E., *The State of the Right of the Colony of New York with Respect to its Eastern Boundary on the Connecticut River . . . 1774*, cited in Hall, H., *op. cit.*, pp. 181-3. See also Alexander, *James Duane*, p. 85.

98 Pell, *Ethan Allen*, pp. 57, 75-6; Livermore, *Early American Land Companies*, p. 130.

99 *Doc. Hist. of N. Y.*, IV, 875-7; cf. also pp. 873-5, 878-884.

clined to comply with Lieutenant-Governor Colden's request.¹⁰⁰ In vain did Colden warn that "Fugitives from all the neighbouring Governments resort thither so that they are now become a numerous and dangerous Body of Banditti which is every day increasing."¹⁰¹ This body of Green Mountain Boys arrogated to itself the prerogatives of sovereign power in its seizure, trial, and sentencing of Yorkers.

The punishment of Yorkers was not always so mild as in the case of Dr. Samuel Adams who was sentenced "to be tied in an armed chair, and hoisted up to the sign (a stuffed catamount's skin), and there to hang two hours. . ." ¹⁰² More harrowing was the trial and punishment of Benjamin Hough in January, 1775, on charges of petitioning the New York Assembly, of advocating the New York cause, and of acting as a magistrate for that colony.¹⁰³ Hough was captured and held in close confinement for three days, during which time Ethan Allen hastened to the scene from his pamphleteering activities against New York. He was then tried before a court which was made up of the leaders of the Green Mountain Boys. His defence was held insufficient and he was sentenced to "receive two hundred lashes on the naked Back, and then as soon as he should be able should depart the New Hampshire Grants and not return again upon pain of receiving five hundred Lashes." ¹⁰⁴

This penalty was severely administered. Hough was then given a certificate and a pass signed by Ethan Allen and Seth

100 *Ibid.*, IV, 884-5; Gen. Gage to Colden, Sept. 19, 1774, *ibid.*, pp. 885-6.

101 Colden to Lord Dartmouth, Oct. 4, 1774, *ibid.*, pp. 886 ff.; *Colden Letter Books*, II, 364-5; cf. pp. 358-9; Dartmouth to Colden, Dec. 10, 1774, *Doc. Hist. of N. Y.*, IV, 889-890; Force, P., *American Archives*, I, 2035.

102 Hall, H., *op. cit.*, p. 187; Smith, J. H., *Our Struggle for the Fourteenth Colony*, I, 113-5.

103 The account of his capture on January 26 and his trial on the 30th can easily be followed in *Doc. Hist. of N. Y.*, IV, 891-903, 916; Force, *American Archives*, II, 215; Hall, H., *op. cit.*, pp. 188-190; Pell, *op. cit.*, pp. 70-1; Allen, I., *Hist. of Vermont*, pp. 45-7.

104 *Doc. Hist. of N. Y.*, IV, 896.

Warner which certified his punishment and ordered that he be given "ffree and unmolested Pasport toward the City of New York, or to the Westward of our Grants he behaving as becometh."¹⁰⁵ When Hough arrived in New York he aroused much sympathy but the authorities were powerless to take any steps against his captors and judges.¹⁰⁶

By March of 1775, before the New York deliberations on Hough had been completed, the rebellion in the New Hampshire Grant region rapidly merged with the greater struggle against England. The New York legislature had alone refrained from supporting the non-intercourse agreement of the Continental Congress. This was felt by the settlers, many of whom, like the Allens, Baker, Bradley, and Chittenden, came from "republican" Connecticut, and were sympathetic to Whigs in other colonies, to be an additional reason for defying New York jurisdiction.¹⁰⁷ Not without reason was the new state which they created at first called "New Connecticut." To the amalgam of anti-British and anti-New York sentiment was added the hatred of many debtors directed against the courts.¹⁰⁸ These debtors, generally the very same settlers who had borrowed heavily to develop their holdings, fought for the security of their land just as bitterly against their creditors as against the New York land speculators.¹⁰⁹ The Cumberland County Court, scheduled to sit on March 14 at Westminster, on the Connecticut River, became the crucible of these intense feelings.¹¹⁰

¹⁰⁵ *Ibid.*, p. 897.

¹⁰⁶ March 9, 1775, *Cal. of Coun. Min.*, p. 504; *Doc. Hist. of N. Y.*, IV, 902; Hall, H., *op. cit.*, pp. 189-190. Hall says this was the last act of personal violence against Yorkers in the colonial period. Cf. Hough's affidavit, August 28, 1774 and Dec. 1775, Duane Mss, III.

¹⁰⁷ Hall, H., *op. cit.*, pp. 190-1, 451, 454-457, 459; Bailey, "Influence toward Radicalism in Connecticut," *loc. cit.*, V, 185-7, 190; *D. A. B.*, I, 188, 194, 526; IV, 80; Crockett, *Vt. Green Mt. State*, I, 260-1.

¹⁰⁸ Affidavit of Oliver Church and Joseph Hancock. *Doc. Hist. of N. Y.*, IV, 910; also p. 914; Wardner, *The Birthplace of Vermont*, pp. 242-4.

¹⁰⁹ *Vide infra*, pp. 191-92.

¹¹⁰ Hall, H. B., *op. cit.*, I, 243-244. Their sentiments were reflected in the epitaph for William French "Who was shot at Westminster March ye 13th

To protect what they conceived to be their land, liberty, and chattels against rival claimants and dunning creditors, these "Whiggish" settlers petitioned Justice Chandler on March 10 to defer the sitting of the court.¹¹¹ Failing in this a party of eighty occupied the court-house on March 13.¹¹² It is doubtful whether they were armed, since they had received assurance from Justice Chandler that no firearms would be used against them.¹¹³ Here they remained on a "sit-down strike," rejecting all requests of the sheriff and magistrates to withdraw. The same evening the sheriff led an armed posse which forced its way into the building against vigorous opposition which was offered with such weapons as the occupants possessed. In the struggle one magistrate and several rioters were wounded, two of them fatally.¹¹⁴ Many fled, leaving the building in the hands of the posse. The victors celebrated their victory by drunken

1775 by the hands of Cruel Ministerial tools of George ye 3d...his Tory crew tha with a bawl his head Shot threw..." Slade, *Vermont State Papers*, p. 568.

111 Hall, H., *op. cit.*, p. 191. M. B. Jones is of the view that the affair had little to do with Tory *v.* Whig cleavages and with the land war against New York. Yet he admits that the rising opposition to British authority and the debtor-creditor conflict were causes of the disturbance, and that the Green Mountain Boys were quick to utilize the episode for propaganda purposes. Surely the last two admissions and the question of New York jurisdiction, where ejectments might have been brought, are adequate reasons for considering this uprising a phase of the small farmer's and the Yankee speculator's struggle for land. *Vide* Jones, M. B., *op. cit.*, pp. 268, 274-75.

112 *Doc. Hist. of N. Y.*, IV, 903-904; for whole affair, see *ibid.*, IV, 904-914; Force, *American Archives*, II, 215-222; Hall, H. B., *op. cit.*, I, chap. IX, especially extensive bibliography in Vol. II, app. I, pp. 746-755; Crockett, *op. cit.*, I, chap. XII.

113 Affidavit of Oliver Church says they were armed with guns and staves. *Doc. Hist. of N. Y.*, IV, 905, 911; *cf. Rivington's New York Gazetteer*..., March 23, and 30, 1775; Hall, H. B., *op. cit.*, I, 232-233. H. B. Hall deprecates the newspaper accounts of the *New York Journal or General Advertiser*, March 23, 1775, maintaining that the occupants of the court-house were unarmed therefore Butterfield was wounded by his own party accidentally. *Cf.* Hall, H., *op. cit.*, p. 191; Wardner, *op. cit.*, p. 245.

114 Justice Benjamin Butterfield was merely grazed by a bullet that passed through his clothes. *Doc. Hist. of N. Y.*, IV, 906, 912. William French and Daniel Houghton died of their wounds. Hall, H. B., *op. cit.*, I, 232-3.

revelry as a result of which several wounded prisoners were not properly tended.

News of the "Westminster Massacre" quickly spread and the next day armed bands in an ugly mood began to gather around the court house. The court opened but the tumult forced an early adjournment. By March 16 about five hundred armed men were assembled, amongst them the Green Mountain Boys under Robert Cockran.¹¹⁵ Many firebrands clamored for summary vengeance. But wiser counsel prevailed.¹¹⁶ The court party was arrested and nine were sent to a jail in Northampton, Massachusetts, from which they were taken to New York on a writ of *habeas corpus* and subsequently freed. The rest were meanwhile released on bond.¹¹⁷

Although the Green Mountain Boys used the affair for propaganda purposes, Colden refused to believe that land titles had anything to do with the disturbance. "The avowed Design of the Rioters," he wrote, "was to shut up the Courts of Justice in imitation of their Neighbors of Massachusetts. . ." ¹¹⁸ He also believed that the heavily indebted farmers were anxious to block the court.¹¹⁹ He sought to discredit Schuyler who considered the root of the matter the land question.¹²⁰ While at first Colden was confident that there were sufficient well-effected people in the region to permit the opening of the court under decent protection, he soon sounded a note of alarm to

115 Hall, H., *op. cit.*, p. 192; Hall, H. B., *op. cit.*, I, 226.

116 A New Hampshire crowd stopped Fulham and Putney people from firing into the court-house in revenge. *Doc. Hist. of N. Y.*, IV, 912; also p. 909. Col. Bellows advised restraint. Benton, *op. cit.*, p. 132; Wardner, *op. cit.*, p. 246.

117 *Doc. Hist. of N. Y.*, IV, 908-910, 915. New York was reached May 3, 1775. Hall, H. B., *op. cit.*, I, 236.

118 Colden to Gen. Gage, April 2, 1775, *Colden Letter Books*, II, 407-8; cf. Colden to Lord Dartmouth, April 5, 1775, *ibid.*, II, 397-8; Jones, *Vermont in the Making*, pp. 274-75.

119 Colden *Letter Books*, II, 397-98.

120 Colden to Gage, April 2, 1775, *ibid.*, II, 407-8. "... The inhabitants of Cumberland County have not been made uneasy by any Dispute about the Title of their Lands." *Ibid.*, II, 397-98.

General Gage that the disorders had "already arrived at such a Highth that it will not be possible to reinstate any legal Authority in the County without assistance from the Military Power." Unless this were forthcoming, he warned, "the Friends of Government in that County must be ruined, and the authority of the civil Power entirely lost."¹²¹

In the months that followed, the movement to overthrow the jurisdiction of New York widened rapidly, coming within the larger orbit of the War for American Independence. A meeting of rebellious farmers at Westminster on April 11, 1775¹²² resolved that the danger from New York was such that it was their duty "to wholly renounce and resist" its administration. The resolution indicated their desire "to be taken out of so oppressive a jurisdiction, and either annexed to some other Government, or erected and incorporated into a new one . . ." In June a crowd tried to block the sitting of a court near Fort Edward but they were suppressed.¹²³ In the face of this disturbance the Committee of Safety of New York could do nothing but deplore the existence of violence.¹²⁴ Meanwhile the news of Concord and Lexington had swept the country. It evoked from Ethan Allen the declaration:

Ever since I arrived at the state of manhood and acquainted myself with the general history of mankind, I have felt a sincere passion for liberty. The history of nations doomed to perpetual slavery, in consequence of yielding up to tyrants their natural-born liberties, I read with a sort of philosophical horror; so that the first systematical and bloody attempt, at Lexington, to enslave

¹²¹ Colden to Gage, April 2 and 13, 1775, *ibid.*, II, 408, 410; cf. Colden to Dartmouth, April 5, 1775, *ibid.*, II, 397-8.

¹²² Force, *American Archives*, II, 315.

¹²³ Wm. Duer wrote June 5, 1775 "...it will not be an easy matter to restore order among a people of so turbulent a spirit." *Journals of the Provincial Congress, Provincial Convention, Committee of Safety and Council of Safety of the State of New York, 1775-7*, I, 71-72. See also letters of William Marsh and Samuel Rose. *Ibid.*

¹²⁴ Sept. 14, 1775, *ibid.*, p. 147.

America, thoroughly electrified my mind, and fully determined me to take part with my country.¹²⁵

Thus inspired, Ethan Allen, no less daring than acquisitive, together with his Green Mountain Boys had taken Fort Ticonderoga.¹²⁶ Did his eagerness to capture the fort arise in part from its nearness to the Burlington area and points north in which his Onion River Company had at that time over 60,829 acres valued at \$297,408.50, eight thousand acres more than Duane's holdings in the whole New Hampshire Grant region?¹²⁷ Indeed, somewhat before, Ethan had assured John Brown, an agent of the Boston Committee of Correspondence, that he would take the fort as soon as hostilities commenced.¹²⁸ However, Allen, hoping to end the controversy with New York, vainly sought an officer's commission from the New York Provincial Congress.¹²⁹ War clouds blotted out the proposed partial settlement of the land controversy that the Lords of Trade, through its secretary, J. Pownall, had hurried to Colden from London.¹³⁰ Governor Tryon, ordered to come to England for grants "incompatible with the spirit of the King's Instructions," returned from London to the rebellious colony with Dart-

125 Pell, *Ethan Allen*, p. 77.

126 May 10, 1775, Hall, H., *op. cit.*, p. 202; Colden to Dartmouth, June 7, 1775, *Doc. Hist. of N. Y.*, IV, 919.

127 This area included Burlington, Jericho, Shelburne, Essex, Colchester, New Huntington, Williston, Charlotte, Swanton, Highgate, and Georgia. Wilbur, *Ira Allen*, II, 522-5; Pell, *Ethan Allen*, pp. 75-7, 102; Livermore, *Early American Land Companies*, pp. 130-1.

128 Pell, *Ethan Allen*, pp. 72-3.

129 July 20, 1775, Force, *American Archives*, II, 1695; *Doc. Hist. of N. Y.*, IV, 919, also 924.

130 J. Pownall to Colden, March 15, 1775, extracts from minutes of Lords of Trade: the proposals were that New Hampshire grants not interfering with any New York or Canadian grant be confirmed; that conflicts be adjudicated in Supreme Court of New York with eventual appeal to the Crown, or arbitrated or otherwise settled. Force, *American Archives*, II, 134-7. This settlement doesn't seem to have been formally reported to the Board of Trade or ratified. *Cal. of Coun. Min.*, March 15, 1775, p. 504; Alexander, *op. cit.*, p. 91, n. 85.

mouth's admonition against taking any further steps for the time being in cases involving the disputed land.¹³¹ But the war made useless any further decisions by London. It was a war in which the aspirations of settlers in the Grants for relief against New York aggrandizement, oppressive creditors, and British monarchism could find expression.

131 Dartmouth to Tryon, May 4, 1775. The prohibition included the granting of land of course. *Doc. Rel. to Col. N. Y.*, VIII, 572-4. Tryon had been ordered on August 3, 1773, to go to London to explain his illegal grants. *Ibid.*, VII, 392.

CONCLUSION

THE colony of New York, then, had its "agrarian question." The sources of yeoman discontent have been sought in many aspects of the land system and in landlord politics. The inequitable distribution of landed wealth, aggravated by statutory evasions, fraud, nepotism, and bribery, that characterized the surrounding circumstances of colonial land policies, provided the general setting for the grants of Livingston Manor, Philipse Patent, Rensselaerswyck, and the New Hampshire Grant region. If tenants and settlers on these grants were not moved primarily by the extravagant size, the "stretching" through vague metes and bounds, or fraud perpetrated upon Indians, they certainly were not loath to seize upon these as occasions for improving their own economic status at the expense of powerful New York landlords or speculators.

The status of eighteenth century tenants upon the manors of Van Rensselaer, Livingston, and, to a lesser extent, Van Cortlandt, and upon Philipse's patent was a basic factor accounting for their discontent. For, although feudal manors had become obsolete, their lords still retained considerable economic and political power over the tenants. Whether on the manors or on the patents, the tenants were oppressed by onerous obligations such as the perpetual rents, tax burdens, or alienation fees. Moreover, they were haunted by the spectre of insecurity of tenure. These aspects of landlord-tenant relations lent their weight to the colonial land policies helping to account for the relative underpopulation of New York. They created a suspicion that the Hudson Valley was not very congenial to farmers who hoped to become owners, a suspicion which the settlers in the New Hampshire Grant region shared.

Neither the extant real property law nor the political mechanism for changing or ameliorating it offered any relief to the tenant farmer. For the law covered the landlord, though not the tenant, with the mantle of security of tenure. Statutes made dubious titles certain; a recording system, which was of special

concern to the large landowner, kept the titles clear. Furthermore, the law of inheritance for intestacy, through entails and primogeniture, encouraged the maintenance of a landed aristocracy.

This aristocracy jealously guarded its privileged status. Even the efforts of a Bellomont proved of little avail against the commanding role that the landed elite played in the preservation of vested privileges. Governors, councilors, assemblymen, judges and lawyers, predominantly drawn from its ranks, offered small comfort to the aggrieved tenant-farmers or settlers who followed Nimham, Prendergast, and the Allens.

The lower stratum of the farming population was barred from the electorate and from the juries, through property qualifications. Indeed, even the enfranchised farmers were frequently at a loss to counteract the pressure that the landlords could exert through their pocket boroughs, which in several cases had extra representation in the Assembly. In defense of their interests, the great landlords branded the aspirations of the poorer farmers as "New England republicanism"; with no less zeal did they defend the common law against the encroachment of the Crown through chancery. In the face of the political dominance of the landlord, the small farmer had neither the power to shape the laws nor the wealth to sustain the expense of judicial redress. Such were the conditions which determined the phases of agrarian discontent.

The closing of all peaceful avenues forced the small farmer to resort to violent action to better his state of economic and political dependence. He seized upon any convenient occasion to improve his status. The Palatines, in the struggle for land, made the charge of bad faith the basis for their opposition to Hunter. The embattled tenants of Livingston, Van Rensselaer, and Philipse welcomed revived Indian claims and rival Massachusetts titles as a means of conducting a fierce anti-rent war, in which the Cortlandt tenants joined, against their landlords. The New Hampshire Grant settlers used a disputed boundary as a pretext for making common cause with Yankee speculators

to save their homes from New York landgrabbers. Economic interest, forceful suasion, and republican principle moved even the reluctant against the absentee landlords of "monarchical" New York. Such were the phases of agrarian conflicts in eighteenth century New York. Discontent so active and virulent could not help leaving its mark on the events that followed.

In the first place, the land controversies in the New Hampshire Grants eventually resulted in the birth of the State of Vermont. Although the idea of independence from New York had been conceived as early as 1765,¹ Vermont did not achieve statehood until its struggle for freedom became linked with the greater movement for American Independence. Town conventions were the vehicles for crystallizing the regional disaffection into revolutionary demands for statehood.² By the end of 1777 a constitution, more democratic than that of any other revolutionary American state defined the fundamental basis for the new commonwealth; and by March 1778 its governing machinery began to gather momentum.³ Significantly, the spearheads of the independence movement were the speculators and settlers west of the Green Mountains. For they had pitched on lands in Bennington, Pownal, and Shaftsbury which had been granted by New York many years before Benning Wentworth's grants. Consequently they could hope for little success in an appeal to New York, or even to the King. Further-

1 Alexander, *op. cit.*, p. 86, nn. 71, 72; "Considerations Respecting a New Jurisdiction . . .," Canada Mss, Box I (N. Y. Hist. Soc.); *Doc. Hist. of N. Y.*, IV, 614; Pell, J., "Philip Skene of Skenesborough," N. Y. State Hist. Assoc., *Quarterly Journal*, IX (1928), 27-44. Thomas Pownall and his friends hoped vainly for a separate province under his governorship. Jones, *op. cit.*, p. 171. Ethan Allen first proposed an independent state. *Ibid.*, pp. 341, 356, n. 24, referring to Ethan Allen to Oliver Wolcott, Sr., March 1, 1775, Oliver Wolcott Mss, Vol. I, no. 1 (Conn. Hist. Soc.).

2 *Collections of the Vt. Hist. Soc.*, I, 11-66; *Records of the Council of Safety of Vt.*, I, 1-79.

3 *Ibid.*, I, 215; Slade, *Vermont State Papers*, pp. 80, 81. The constitution contained a provision for manhood suffrage without any "freeholder" or "tax-payer" clause. Poore, *Federal and State Constitutions*, II, 1857-65; Nevins, A., *The American States during and after the Revolution 1775-1789*, pp. 170, 674-5; Jones, *op. cit.*, pp. 389-392.

more, they included the heaviest land speculators, who, having gambled their all on New Hampshire titles, and being without means to finance any compromise, saw no possible conclusion save that of victory over New York.⁴

More difficult was the task of maintaining Vermont's identity in the face of the many dangers that beset it, chiefly from New York and Great Britain and, to a lesser extent, from New Hampshire and Massachusetts.⁵ Governor Chittenden and the Allens warded off these threats against their newly created state and their landed interests, with shrewd diplomacy and with the might of militant farmers.⁶ In intelligent leadership and dogged persistence they proved more than a match for Governor Clinton and James Duane, whose opposition was sharpened by their interest in Vermont land.⁷ The Vermont leaders were master tacticians in splitting the ranks of their enemies and in using allies to the best advantage. To improve their bargaining power, in the Continental Congress,⁸ they boldly laid claim to the land westward to the Hudson River and eastward to include disaffected New Hampshire river towns.⁹ To protect their great

⁴ *Ibid.*, pp. 353-54.

⁵ E. P. Alexander gives an excellent account of Clinton's and Duane's opposition to the independent movement of Vermont. *James Duane*, pp. 126-127, 137-147, 152-53, 168-170, 188, 201-203. For New Hampshire's part in the controversy, Upton, *Revolutionary New Hampshire*, chap. XIV.

⁶ Chittenden purchased a half interest in about 5250 acres in Williston from the Onion River Company. He participated in forty-two town grants in 1779-1781. Wilbur, *Ira Allen*, II, 522-523; Woodard, *Town Proprietors in Vermont*, p. 130; Livermore, *Early American Land Companies*, p. 28, n. 58.

⁷ That Clinton was owner of a large tract in Cavendish seems evident from the fact that John Russell, in a letter of November 16, 1781, advised him to evade the heavy Vermont tax by selling his land. *The Public Papers of George Clinton*, VII, 505.

⁸ First hearing in Congress was in June, 1777. Alexander, E. P., *op. cit.*, pp. 126-127, 143. Cf. Burnett, E. C., ed., *Letters of Members of the Continental Congress*, III, 427, 472, 473; IV, 432-36; V, 408-411; VI, 171-73, 523-525; VII, 571-74; VIII, 569, *passim*; *Journals of the Continental Congress, 1774-1789*, *passim*; *Records of the Council of Safety of Vermont*, III, 231-96.

⁹ Vermont extended jurisdiction over the Western Union in 1781 and included the Eastern Union in 1778, though both claims were given up by

landed interest and political independence, the Allens entered into involved negotiations with Great Britain.¹⁰ The violence with which Vermont treated Yorkers and defied the Continental Congress gave Washington serious concern.¹¹ By 1785 the futility of further resistance to Vermont independence was universally conceded.

In 1790 New York and Vermont settled their difficulties,¹² after which New York renounced its land claims and Vermont was duly admitted as a state.¹³

In the second place, the land system and agrarian revolts affected the alignment of the small farmer with Patriots and Tories. Without defining precisely what all the relationships

1782. Upton, R. F., *op. cit.*, pp. 192-196; Wardner, H. S., *op. cit.*, pp. 460-476, 481-490, 521, 527-537; *Records of the Council of Safety of Vermont*, I, 405-441; V, 506-543. New York's view of these Vermont activities can be traced in *The Public Papers of George Clinton*.

10 Correspondence on exchange of prisoners seemed to involve British expectation of Vermont's return to allegiance, although it is doubtful if Vermont ever really intended more than a ruse. "Negotiations between Vermont and Frederick Haldimand, Governor of Canada . . . 1779-1783," and related materials, all in *Collections of the Vermont Historical Society*, II (1871), 1-394; Williams, S., *The Natural and Civil History of Vermont*, II, 201-218; Wardner, *op. cit.*, pp. 301, 501-511, 517-519, 522-3, 537-540; *Public Papers of George Clinton*, VI, 362, 375, 394, 406, 539, 775-7, 787-8, 846; VII, 606-7, 623-4; Burnett, *Letters of Members of the Continental Congress*, VI, 147 n., 148, 155, 157, 69 n., 171, 184, 288 n., *et seq.*; Pell, *op. cit.*, chaps. XXV-IX, XXXI; Wilbur, *op. cit.*, I, chaps. VI-X.

11 Hall, H. B., *op. cit.*, I, 436, 446-457, 467-8; II, chap. XVIII; *Public Papers of George Clinton*, IV, 846-8; V, 53, 55, 59; VII, 632, *et passim*. Washington viewed the necessity of coercion by Congress as calamitous. Washington to Joseph Jones, Feb. 11, 1783, Spark, S. J., ed., *The Writings of George Washington* (12 vols., Boston, 1834-7), VIII, 382-4.

12 Vermont was recognized as a state on October 7, 1790, and New York claims were extinguished for \$30,000 paid by Vermont. *Report of Regents on Boundaries of N. Y.*, I, 224-9; *Records of the Council of Safety of Vermont*, III, 421-463. Cf. *Report of the Regents on Boundaries of N. Y.*, I, 224; *Laws of New York*, III, 125-6, 104; Hall, H. B., *op. cit.*, II, 555-560.

13 Vermont applied to Congress for statehood on January 10, 1791 and secured admission on February 18, 1791. *Report of the Regents on Boundaries of N. Y.*, I, 229-230; *Records of the Council of Safety of Vermont*, III, 485-9. For the liquidation of New York claims, see "Report of the New York Land Commissioners April 23, 1799," in *Doc. Hist. of N. Y.*, IV, 1024-5.

were, it is perhaps possible roughly to sketch some of them. The bulk of the small farmers in Vermont were "whiggish" in their politics. The dealings of their leaders with the British were a phase of their tactics rather than of their politics.¹⁴ Here the struggle for land had obviously become connected with the republican Yankee's aversion to "monarchical" New York and to Great Britain.

The small farmers of Albany, Dutchess, and Westchester Counties, which had been the scenes of agrarian disturbances in the '50s and '60s, had a large Tory contingent.¹⁵ Viewing all three counties, the list of judgments against loyalists show that most were against yeomen: 153 out of 267, 57 per cent, adjudged in Albany County; 47 out of 65, 72 per cent, in Westchester; and 28 out of 56, 50 per cent, in Dutchess. Furthermore, the distribution by counties of judgments against all 358 convicted small farmers of the state showed 153, 43 per cent, in Albany; 47, 13 per cent, in Westchester; and 28, 8 per cent in Dutchess. The last two counties were exceeded only by Tryon with 81 or 23 per cent of the total yeomen defendants.¹⁶ During the last three months of 1776 two hundred and thirty-one loyalists from Dutchess and Albany Counties were sent into New Hampshire for safekeeping since the New York jails were overcrowded.¹⁷ The lists of non-signers of the

14 The Allen dealings with the British were probably contemplated for the reason suggested above rather than for any preference for monarchism.

15 A. C. Flick concludes that "The emigrants to Nova Scotia included not a few of the aristocratic type, but consisted mostly of disbanded loyalist soldiers, farmers, small merchants and traders, physicians, clergymen and persons of various trades and of no trades." *Loyalism in New York during the American Revolution*, pp. 172, also 170-5, 182, 188-9, 204; *Report on Canadian Archives*, 1888, pp. 732, 734, 742; *ibid.*, 1885, p. 286; *ibid.*, 1886, pp. 448, 450, 452, 453; *ibid.*, 1887, pp. 165, 365; *ibid.*, 1894, pp. 422, 438. For convenient summary of loyalist areas, Flick, *op. cit.*, p. 179; Spaulding, *N. Y. in the Critical Period*, p. 120 and n. 22.

16 All figures are drawn from a tabulation of N. Y. State, List of Loyalists against Whom Judgments were Given under the Confiscation Act, 1783 (N. Y. P. L.). They by no means pretend to present a complete picture of the number and character of Tories.

17 Upton, *op. cit.*, p. 123; *New Hampshire State Papers*, VIII, 475, 476.

General Association and of Tories examined at Kingston reveal many loyalists in Dutchess, especially in Livingston Manor.¹⁸

When Prendergast was pardoned, the small farmers viewed the King as a shield against rapacious landlords. To what extent did this sentiment affect the political affiliations of small farmers, at least where patriot landlord families like the Van Rensselaers and Livingstons were concerned? Almost a score of Tories were found whose names and residences suggest relationship to those active in agrarian disturbances: Benjamin Baker, Christian Crow, Arent and Casper M. Hallenbeck, David Ingersoll, Anthony and Stephen Miller, Samuel Munroe, Benjamin Noble, William Prendergrast (*sic*), Andries Rees, Thomas Robinson, John Stewart, Nathan Whitney, Hazard and Stephen Wilcox, and Jonathan Wright.¹⁹ The toryism that was rampant in Westchester County was supported by small farmers.²⁰ It is significant that there the 1766 upheaval

18 Huntting, *History of the Little Nine Partners*, pp. 40-45, 73-77. Armont Viele, who was very active in Livingston Manor, was condemned to death for his activities. *Ibid.*, pp. 75-76. In Dutchess, "The people were pretty evenly divided in sentiment, the whigs being in the majority in the northern and western part of the county, and the tories in the southern and eastern." *Poughkeepsie Weekly Eagle*, July 8, 1876. See also Force, *American Archives*, I, 1164; II, 5, 176, 304-305, 834-835; III, 466, 597-606, 608, 719; VII, 377, 360, 500, 1407; VIII, 903, 977, 991; IX, 205, 231, 241-242, 289, 468, 469; *American Loyalists Transcripts*, XXXII, 549-580; XLVI, 625-628, and *passim* in Vols. XVII-XXIV and Vols. XLI-XLVI; New York State, List of Loyalists against whom Judgments Were Given under the Confiscation Act, 1783 (N. Y. P. L.).

19 The evidence on this suggestion is insufficient. For example, the William Prendergrast mentioned is from Cambridge District, Albany County and not from the Philipse Patent. Paltsits, V. H., ed., *Minutes of the Commissioners for Detecting and Defeating Conspiracies in the State of New York, Albany County Sessions, 1778-1781*, I, 157, 158, 177-8, 191, 197-8, 220, 235, 242, 286, 371; II, 458, 509, 510, 660-1. Cf. New York State, List of Loyalists against Whom Judgments Were Given under the Confiscation Act, 1783 (N. Y. P. L.); Taylor, *Hist. of Great Barrington*, pp. 241-5; Smith, J. E. A., *History of Pittsfield, Massachusetts, from the year 1734 to the year 1800*, I, 196. The point of the question has no application whatever to the Philipses, since they were Tories, as were many other great landlords like the Johnsons, DeLanceys, Morrisises and Robinsons. See also Ellis, *Hist. of Columbia County*, p. 42; *Columbia County at the End of the Century*, I, 40.

20 Dawson, *Westchester County, New York, During the American Revo-*

probably hastened land reforms that gave greater security of tenure even before the Revolution.²¹ Anxious to preserve the new economic *status quo*, a considerable number of small farmers of this county embraced toryism.

The Revolution abolished entail and primogeniture, both of which prevented division or alienation of many great estates like Livingston Manor. Thus an absolute fee tail became an unconditional fee simple, and real property of intestates descended in equal parts to all the children of the blood of the deceased.²² Feudal obligations like wardships, fines for alienation, charges for knight's service, scutage, relief, and aids were swept away and all feudal tenures like those held directly of the Crown or of knight's service, were made "allodial."²³ Quit-rents were vested in the State in 1779 and their commutation allowed in 1786 by the payment of fourteen times the value of the annual quit-rent. All arrears in quit-rents up to September 29, 1783 were remitted.²⁴ Manors were broken up²⁵ and

lution, p. 47; Force, *American Archives*, I, 802-3; II, 282, 314, 321, 644; IV, 1043, 1083-9; VI, 1152; VII, 1145; VIII, 384-5, 829, 841, 991; IX, 469; Hufeland, *Westchester County During the Revolution*, pp. 367, 92, 101.

21 Before the Revolution, the farmers of Westchester County "were favored as few other purely agriculturists have been favored, then or since, in any part of the world." They had productive soil, fixed tenure, moderate rentals, and proximity to the New York market. Scharf, *op. cit.*, I, 178-9; Spaulding, *N. Y. in the Critical Period*, p. 68; see above, pp. 69-71, 137.

22 July 12, 1782, *Laws of the State of New York, 1777-1801*, I, 501-2; also Feb. 23, 1786, *ibid.*, II, 191-3; Fowler, *Hist. of the Law of Real Prop. in N. Y.*, p. 73; Spaulding, *N. Y. in the Critical Period*, pp. 68-9. On the movement to break up large estates, see Morris, *Studies in the History of American Law*, pp. 76, 123-4.

23 Feb. 20, 1787, *Laws of the State of New York*, II, 415-416; Fowler, *op. cit.*, p. 79.

24 Oct. 22, 1779, and April 1, 1786, *Laws of the State of New York*, I, 178; II, 203-207; Fowler, *op. cit.*, p. 72; Spaulding, *op. cit.*, p. 70; Bond, *The Quit-Rent System in the American Colonies*, pp. 283-284. When the New Hampshire grantees complained that the quit-rents were an "Innovation upon the Rights of Mankind", anticipating the general policy, the provincial congress of New York offered the petitioners a permanent commutation of these dues. Report of N. Y. Provincial Congress, May 10, 1777 and Proclamation, Feb. 23, 1778, *Doc. Hist. of N. Y.*, IV, 938-939, 954.

25 See n. 23 and the Township Act of March 7, 1788, *Laws of the State*

estates of loyalist proprietors and tenants confiscated.²⁶

Yet despite these changes, the land system, propped by the constitution of 1777,²⁷ was not very materially changed so far as the small farmer was concerned. Thus, though alienation fines had been formally abolished, quarter-sales in fact persisted until 1846.²⁸ The predominance of large scale land owners led a shrewd foreign observer to plan a tract in 1784 "on the necessity of establishing some *Agrarian Laws* in America to prevent *Monopolies of Land*. . ." ²⁹ The eventual parcelling ³⁰ of loyalist estates in Westchester to small farmers merely continued a policy begun before the Revo-

of *New York*, II, 748-769. Manors were recognized not as legal but reputed manors. Fowler, *op. cit.*, p. 84; Spaulding, *op. cit.*, p. 70.

26 Oct. 22, 1779, *Laws of the State of New York*, I, 173-184; Spaulding, *op. cit.*, p. 70; on confiscation of leaseholds of Tory tenants, R. G. Livingston to Gilbert Livingston, Feb. 14, 1781, Gilbert Livingston Papers (N. Y. P. L.).

27 "...that nothing in this constitution shall be construed to affect any grants of land, within this State, made by the authority of the said King or his predecessors, or to annul any charters to bodies politic, by him or any of them made." Art. XXXVI; cf. Fowler, *op. cit.*, p. 81; Spaulding, *op. cit.*, pp. 68-69.

28 Fowler, *op. cit.*, p. 75. Many of the grievances of the anti-renters of the 1840s were the same as in 1775. Cochran, T. C., *New York in the Confederation*, p. 182; Spaulding, *op. cit.*, pp. 80 and 70; For evaluations of the Revolution and land, see: Nevins, A., *The American States during and after the Revolution 1775-1789*, p. 444; Jameson, J. F., *The American Revolution Considered as a Social Movement*, chap. II. Jameson is in error as far as New York is concerned when he says of the land system, "...there had been no grinding oppressions or exactions connected with it." *Ibid.*, p. 48. *Vide infra*, n. 42.

29 Granville Sharp to Joseph Reed, August 3, 1784, Mss of Joseph Reed, Vol. XI (N. Y. Hist. Soc.). This Reed, the Revolutionary statesman and soldier, is not to be confused with Joseph Reade, the Councilor.

30 It is probable that confiscated estates were first sold to realtors who then passed them on to small farmers after exacting a profit. Yoshpe, H., "The DeLancey Estate. Did the Revolution Democratize Land Holding in New York?" *New York History*, XXIX (1936), 167-179; Yoshpe, H., "The Disposition of Philipse Manor after the Revolution," *Quarterly Bulletin of the Westchester County Historical Society*, XIV (1938), 95; also his *Disposition of Loyalist Estates*, pp. 31-2, 43, 54, 58-9, 60-1, 76-8, 114-19; cf. Cochran, *op. cit.*, p. 182; Spaulding, *op. cit.*, p. 70; to *contra* Flick, *Loyalism in New York during the Revolution*, p. 159.

lution.³¹ Yet, many patriot tenants on these confiscated loyalist estates found themselves unable or unwilling to use their pre-emption right to buy back the lands and improvements in their possession and were consequently ejected.³² Furthermore, the tenants of Van Rensselaer and Livingston in Albany and Dutchess Counties continued to complain of grievances.

In these disaffected regions, the period of the Confederation bore its heritage of hatred. During Shays's rebellion, the fear that aggrieved New York farmers would make a common cause with insurgent Massachusetts farmers prompted strenuous precautions. For was not the small farmers' anti-rentism against New York landlords cut from the same piece as the debtor farmers' rebellion against Yankee creditors? The refugees that fled from General Lincoln's cohorts found havens in New York, Vermont, New Hampshire, and elsewhere. Indeed, border towns in New York like New Lebanon were reputed to be bases of operation for a counter thrust.³³ Alarmed, Governor Clinton issued a proclamation, February 24, 1787, against the "horrid and unnatural" rebellion in which he offered rewards of one hundred and fifty pounds for the arrest of leaders like Daniel Shays, Luke Day, Adam Wheeler, and Eli Parsons, and enjoined the citizens of the state against supplying arms to the rebels.³⁴ Furthermore, he laid the matter before the Legislature which responded with a resolution urging him to go with

³¹ *Vide supra*, n. 21.

³² Assembly Papers (N. Y. State Library), XXVII, 284, 289; XXVIII, 112, 142; *Laws of the State of New York*, I, 179-180. See also Yoshpe, *Disposition of Loyalist Estates*, pp. 32-35, 56-57, 114-115.

³³ Letter from Springfield, March 3, 1787 in *The Daily Advertiser*, March 8, 1787. Cf. *New York Packet*, March 6, March 8 and June 9, 1787; McMaster, J. B., *History of the People of the United States from the Revolution to the Civil War* (8 vols., N. Y., 1883-1913), I, 325-327. The propaganda emanating from the rebel leaders bore a significant resemblance to the natural rights philosophy of the Allens. A letter of Eli Parsons, February 13, 1787, called upon his fellow Shaysites "to support those rights and privileges that the God of nature hath intitled you to." *Daily Advertiser*, March 6, 1787.

³⁴ Proclamation of Governor Clinton, February 24, 1787, Broadside (N. Y. P. L.), reprinted in *N. Y. Journal or Weekly Register*, March 1, 1787; *N. Y. Packet*, February 27, March 2, 1787.

all speed to the towns which harbored the Massachusetts rebels, and authorizing him to call out the militia and lead them and even Massachusetts troops anywhere within the state. The Governor ordered three regiments to stand guard in Columbia and Dutchess Counties and hastened to Albany to await developments.³⁵

Such martial vigor, together with unfriendly newspaper accounts, no doubt discouraged any expression of sympathy beyond the secret aid and comfort extended by the border towns. Indeed, as a result, the Massachusetts rebels, who were collecting their forces in the northeastern part of New York, shifted their activities to Vermont. Here, where two decades of successful opposition to New York land speculators had made rebellion respectable, Governor Chittenden, subject to great pressure from without the state, reluctantly issued a proclamation against assisting Shays's men. But armed Vermonters obligingly reduced the proclamation to a mere matter of form.³⁶

Opposition to the Federal Constitution in New York was to be expected from disgruntled tenant-farmers who hated the landlords and feared the taxing and debt enforcing powers of a stronger government. The farmers, warned that "our great and rich men are still unsatisfied; they want a new plan of government,"³⁷ rejected Duane's efforts to rally their support in Albany County, as they did Livingston's in Dutchess. "People's

³⁵ *Journal of the Assembly of N. Y.*, 1787, pp. 62, 80; *Journal of the Senate of N. Y.*, 1787, pp. 35-6, 48-9; McMaster, *op. cit.*, I, 328, which erroneously says troops could be led "without the state"; *Country Journal*, March 14, 1787, and *The Massachusetts Gazette*, March 13, 1787, quoted in Spaulding, *N. Y. in the Critical Period*, pp. 150-1; Minot, G. R., *History of the Insurrection in Massachusetts in 1786*, pp. 146-156; Spaulding, *His Excellency, George Clinton*, p. 164; Burnett, *Letters of Members of the Continental Congress*, III, 511, 516, 517, 557.

³⁶ McMaster, *op. cit.*, I, 329-330; *New York Journal or Weekly Register*, March 22, 1787; *Records of the Governor and Council of Vermont*, III, 375-9; Pell, *Ethan Allen*, pp. 259-260; but cf. p. 262.

³⁷ *New York Journal*, April 29, 1788; cf. Spaulding, *N. Y. in the Critical Period*, pp. 80-81, 154-5. Spaulding notes that Westchester farmers had but few grievances against their landlords. Consequently they could join them to support the Federalist cause in 1788. *Ibid.*, p. 68.

minds are wonderfully poisoned," wrote Peter Van Schaack,³⁸ "nor do I believe there can be any anti-dote applied to the Eastward, where the ill-fated controversies about their lands make this (election) in their Idea a contest pro Aris et Focis."

The agitation against Livingston and Van Rensselaer continued to simmer until the great anti-rent movement of the 1840s. In 1791 there was vigorous opposition to the auctioning of the land of evicted farmers, although the movement collapsed when the government took vigorous steps after the killing of Sheriff Cornelius Hageboom.³⁹ In 1795 a petition demanded an investigation of the Livingston titles on the grounds that these had been fraudulently acquired and were "oppressive and burthensome to the last degree, unfriendly to all great exertions of Industry and tending to degrade your Petitioners from the Rank the God of Nature destined all Mankind to move in, to be Slaves and Vassals."⁴⁰ In 1811 some tenants of George Clark questioned their landlord's titles. The disorder which followed brought the Legislature to contemplate relief.⁴¹ But this was not forthcoming until after the anti-rent riots of the '40s.⁴² A constitutional amendment was required to still the whirlwind which colonial forbears of the great landed families had sown.

38 To Philip Schuyler, April 3, 1788, Schuyler Papers, no. 2179 (N. Y. P. L.).

39 French, *Gazetteer of the State of New York*, p. 242.

40 Petrus Pulver *et al.*, *Doc. Hist. of N. Y.*, III, 834-9, reported on unfavorably, *ibid.*, p. 841 n. See original "Polfer" petition. Redmond-Livington Mss.

41 These tenants were from Montgomery, Delaware, Dutchess, Otsego and Saratoga Counties. But at the same time an investigation of the Livingston title was proposed in the Legislature. Cheyney, E., *The Anti-Rent Agitation in the State of New York 1839-1846*, p. 22.

42 The complaints in 1840 were aimed at traditional privileges and incidents of the manors and patents as they existed before the Revolution: distraint, mining, water and mill privileges, short leases, rent in winter when wheat was high, quarter sales, and degrading tenures. *New York Assembly Document*, no. 261, April 23, 1841.

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